

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 23

STATE BANK OF HARDINSBURG, PETITIONER,

vs.

CHANCEY RAY BROWN AND MARY G. BROWN

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 4, 1942.

CERTIORARI GRANTED MARCH 30, 1942.



IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

—
No.
—

IN THE MATTER OF CHANCEY RAY BROWN AND
MARY G. BROWN, DEBTORS.

STATE BANK OF HARDINSBURG,

Petitioner,

vs.

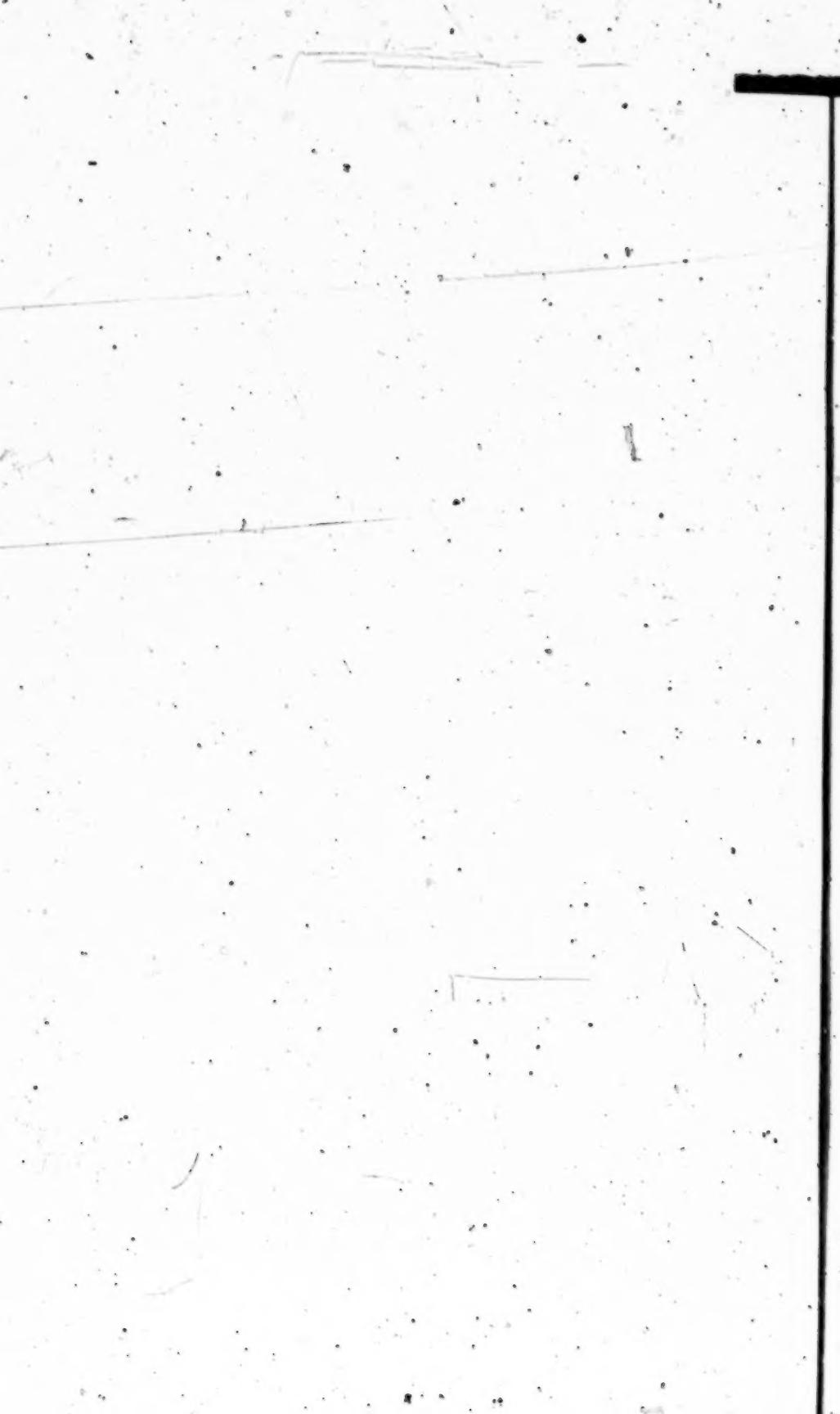
CHANCEY RAY BROWN AND MARY G. BROWN;
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SEVENTH CIRCUIT.



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TRANSCRIPT OF RECORD

IN THE

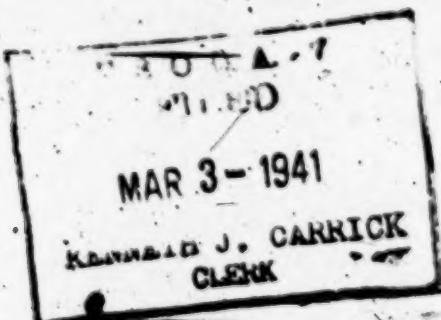
United States Circuit Court of Appeals
For the Seventh Circuit

No. 7574

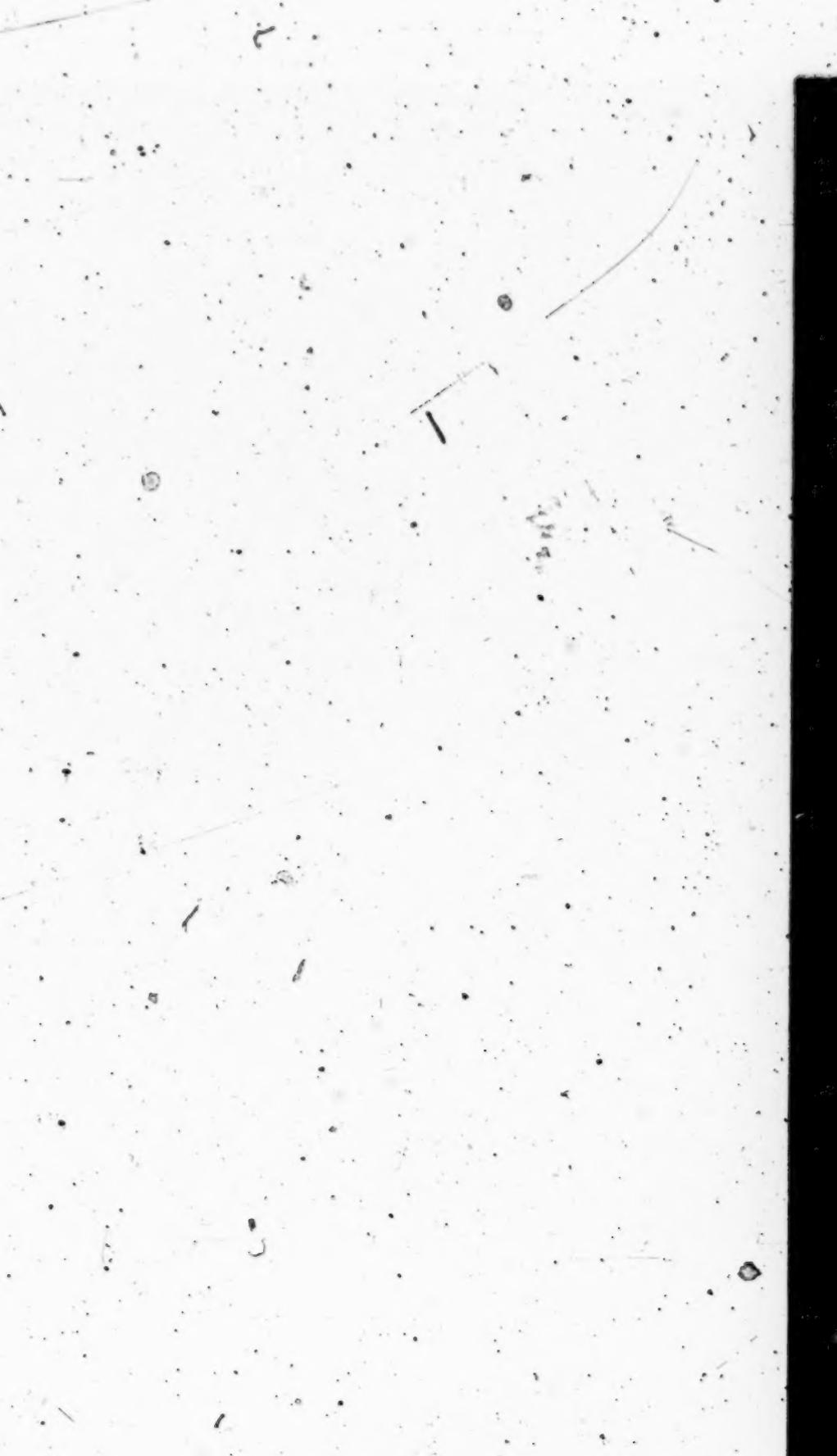
IN THE MATTER OF CHANCEY RAY BROWN AND MARY
G. BROWN, DEBTORS.

CHANCEY RAY BROWN AND MARY G. BROWN,
Appellants,
vs.

STATE BANK OF HARDINSBURG,
Appellee.



Appeal from the District Court of the United States for the
Southern District of Indiana, New Albany Division.



IN THE

United States Circuit Court of Appeals
For the Seventh Circuit

No. 7574

IN THE MATTER OF CHANCEY RAY BROWN AND MARY
G. BROWN, DEBTORS.

CHANCEY RAY BROWN AND MARY G. BROWN,
Appellants,
vs.

STATE BANK OF HARDINSBURG,
Appellee.

Appeal from the District Court of the United States for the
Southern District of Indiana, New Albany Division.



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Petition.

1

1 IN THE DISTRICT COURT OF THE UNITED STATES
For the Southern District of Indiana,
New Albany Division.

Pleas in the District Court of the United States for the Southern District of Indiana, at the United States Court House in the City of New Albany, in said District, before the Honorable Robert C. Baltzell, Judge of said District Court.

In the Matter of
Chancey Ray Brown, and
Mary G. Brown,
Debtors. } No. 554 In Bankruptcy.

Be it remembered, that heretofore to wit: at the April Term of said Court on the 28th day of May, 1940, before the Honorable Robert C. Baltzell, Judge of said Court, the following proceedings were had herein, to wit:

Come now the debtors and file voluntary petition under Section 75 of the Bankruptcy Act, which petition is as follows:

2 Debtor's Petition:

Filed
Apr. 28,
1949.

IN THE DISTRICT COURT OF THE UNITED STATES
For the Southern District of Indiana.

PETITION.

To the Honorable Robert C. Baltzell, Judge of the District Court of the United States for the Southern District of Indiana, New Albany Division.

The Petition of Chancey Ray Brown, joined by Mary G. Brown, his wife, residing at (Street Address) R. F. D. #3, Orleans (County of) Orange, (State of) Indiana, by occupation a farmer engaged in business of farming. (Employ-

er's name and address—or business name and address)

Respectfully Represents: 1. That your petitioner has had his principal place of business [or has resided, or has had.....domicile] at near Bromer, Orange Co., Indiana, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. That the schedule hereto annexed, marked A [1, 2, 3, 4, 5], and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said Act.

4. That the schedule hereto annexed, marked B [1, 2, 3, 4, 5, 6], and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore Your Petitioner Prays, That he may be adjudged by the Court to be a bankrupt within the purview of said Act.

Chancey Ray Brown,
Mary G. Brown,

Petitioner.

C. R. McBride,
Attorney for Petitioner,
New Albany, Ind.

United States of America, }
State of Indiana, } ss.
County of Floyd.

Oath for Individual.

I, Chancey Ray Brown, joined by Mary G. Brown, my wife, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Chancey Ray Brown,
Mary G. Brown,

Petitioner.

Subscribed and sworn to before me, this 27th day of May, 1940.

(Seal)

Charles R. McBride,

Notary Public.
(Official Character.)

My Com. Ex. May 8, 1942.

(All schedules to be filed in triplicate with this petition.)

3 (Note.—Each question should be answered or the failure to answer explained. If the answer is "none," this should be stated. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.

The term, "original petition," as used in the following questions, shall mean the petition filed under section 3b or 4a of chapter III, section 322 of chapter XI, section 422 of chapter XII, or section 622 of chapter XIII.)

Proceedings shall be entitled "In Bankruptcy," "In Proceedings for—a Composition or Extension,"—"an Arrangement,"—"a Real Property Arrangement," "or—a Wage Earner Plan," as the case may be. Rule 5 Paragraph 4.

In proceedings under chapter VIII, X, XI, XII, or XIII, of the Act, unless and until the debtor is adjudicated a bankrupt he shall be referred to as a "debtor."

Filed
May 28,
1940.

STATEMENT OF AFFAIRS.

(For Bankrupt or Debtor Not Engaged in Business)

Form 2.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Indiana,

New Albany Division.

Filed May 28, 1940. Albert C. Sogemeier, Clerk.

1. Name and residence?

- a. What is your full name? Chancey Ray Brown.
- b. Where do you now reside? Orange County, Indiana.
- c. Where else have you resided during the six years immediately preceding the filing of the original petition herein? Nowhere else.

2. Occupation and income.

a. What is your occupation? Farmer.
b. Where are you now employed? (Give the name and address of your employer, or the address at which you carry on your trade or profession, and the length of time you have been so employed.) I operate my own farm in Orange County, Indiana.
c. Have you been in partnership with anyone, or engaged in any business, during the six years immediately preceding the filing of the original petition herein? (If so, give particulars, including names, dates and places.) No. Unless my wife, Mary G. Brown, might be regarded as such.

d. What amount of income have you received from your trade or profession during each of the two years immediately preceding the filing of the original petition herein? For 1938 my income did not exceed \$650. For 1939, \$600.

e. What amount of income have you received from

other sources during each of these two years? (Give particulars, including each source, and the amount received therefrom.) None.

3. Income tax returns.

a. Where did you file your last federal and state income tax returns, and for what years? I have filed no Federal or State Income Tax return. Ex. exceed income.

4. Bank accounts and safe deposit boxes.

a. What bank accounts have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original petition herein? (Give the name and address of each bank, the name in which the deposit was maintained, and the name of every person authorized to make withdrawals from such account.) None.

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash or other valuables, within the two years immediately preceding the filing of the original petition herein? (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name of every person who had the right of access thereto, a brief description of the contents thereof, and, if surrendered, when surrendered, or, if transferred, when transferred and the name and address of the transferee.) Nothing of the kind.

5. Books and records.

a. Have you kept books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein? No.

b. In whose possession are these books or records? (Give names and addresses.) None kept.

c. Have you destroyed any books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein? (If so, give particulars, including date of destruction and reason therefor.) No.

6. Property held in trust.

a. What property do you hold in trust for any other person? (Give name and address of each person, and a description of the property and the amount or value thereof.) Nothing of this kind.

7. Prior bankruptcy or other proceedings; assignments for benefit of creditors.

a. What proceedings under the Bankruptcy Act have been brought by or against you during the six years immediately preceding the filing of the original petition herein? (Give the location of the bankruptcy court, the nature of the proceeding, and whether a discharge was granted or refused, or a composition, arrangement or plan was or was not confirmed.) None.

b. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver or trustee? (If so, give the name and location of the court, the nature of the proceeding, a brief description of the property, and the name of the receiver or trustee.) No.

c. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein? (If so, give dates, the name of the assignee, and a brief statement of the terms of assignment or settlement.) No.

4 8. Suits, executions and attachments.

a. Have you been party plaintiff or defendant in any suit within the year immediately preceding the filing of the original petition herein? (If so, give the name and location of the court, the title and nature of the proceeding, and the result.) Yes. State Bank of Hardinsburg *vs.* myself and wife. Circuit Court of Orange County, Indiana, Paoli, Indiana.

b. Has any execution or attachment been levied against your property within the four months immediately preceding the filing of the original petition herein? (If so, give particulars, including property seized and at whose suit.) Yes. Under above cited action.

9. Loans repaid.

a. What repayments of loans have you made during the year immediately preceding the filing of the original petition herein? (Give the name and address of the lender, the amount of the loan and when received, the amount and date when repaid, and, if the lender is a relative, the relationship.) International Harvester Company, Chicago, Illinois. Bought a tractor for \$1070. Traded old tractor,

making debt \$750. Paid \$306.59 last year, cancelling debt, Huber Mfg. Co., Marion, Ohio. Original debt \$1250. made in 1935. Paid \$268. last year in final settlement.

10. Transfer of property.

a. What property have you transferred or otherwise disposed of during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of; and, if the transferee is a relative, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.) None.

11. Losses.

a. Have you suffered any losses from fire, theft or gambling during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including dates, and the amounts of money or value and general description of property lost.) None.

Chancey Ray Brown,
Bankrupt [or Debtor].

State of Indiana } ss.
County of Floyd }

I, Chancey Ray Brown, the person who subscribed to the foregoing statement of affairs, do hereby make solemn oath that the answers therein contained are true and complete to the best of my knowledge, information and belief.

Chancey Ray Brown,
Bankrupt [or Debtor].

Subscribed and sworn to before me this 27th day of May, 1940.

Charles R. McBride,
Notary Public.
[Official Character.]

My Commission Expires May 8, 1942.

5. (Entry for May 28, 1940, continued)

Come now the debtors, Chancey Ray Brown and Mary G. Brown, and withdraw their petition filed on May 28, 1940, on account of it being wrongfully filed.

6 And afterwards towit at the April Term of said Court on the 4th day of June, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, towit:

Come now the debtors and file voluntary petition and schedules under Section 75 of the Bankruptcy Act, which petition and schedules are as follows:

*Filed
June 4,
1940.*

**7 DEBTORS' PETITION IN PROCEEDINGS UNDER
SECTION 75 OF BANKRUPTCY ACT.**

To the Honorable Robert C. Baltzell, Judge of the United States District Court for the Southern District of Indiana:

The petition of Chancey Ray Brown and Mary G. Brown, his wife, of R. F. D. #3, Orleans in the County of Orange and District and State of Indiana, respectively represent:

That they are personally, bona fide engaged primarily in farming operations (or that the principal part of their income is derived from farming operations) as follows:

Farming

that such farming operations occur in the county (or counties) of Orange within said judicial district; that they are insolvent (or unable to meet their debts as they mature); and that they desire to effect a composition or extension of time to pay their debts under Section 75 of the Bankruptcy Act.

That the schedule hereto annexed, marked "A", and verified by your petitioners' oath, contains a full and true statement of all their debts; and (so far as it is possible to ascertain) the names and places of residence of their creditors, and such further statements concerning said debts as are required by the provisions of said act.

That the schedule hereto annexed, marked "B", and verified by your petitioners' oath, contains an accurate inventory of all their property, both real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Debtors' Petition, Etc.

9

Wherefore your petitioners pray that their petition may be approved by the Court and proceedings had in accordance with the provisions of said section:

Chancey Ray Brown,
Mary G. Brown,
Petitioners.

C. R. McBride,
Attorney for Petitioners.

New Albany, Indiana.

United States of America, } ss:
Southern District of Indiana. }

We, Chancey Ray Brown and Mary G. Brown, his wife, the Petitioning debtors mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of their knowledge, information and belief.

Chancey Ray Brown,
Mary G. Brown,
Petitioners.

Subscribed and sworn to before me this 27th day of May, A. D. 1940.

Charles R. McBride,
Notary Public.

(Seal)

My Com. Ex. May 8, 1942.

Debtor's Petition.

IN THE DISTRICT COURT OF THE UNITED STATES.

For the Southern District of Indiana.

In the Matter of
Chancey Ray Brown, joined by } In Bankruptcy.
Mary G. Brown, his wife. } No. 554.

PETITION.

To the Honorable Robert C. Baltzell, Judge of the District Court of the United States for the Southern District of Indiana; New Albany Division.

The Petition of (Full Name. No Initials) Chancey Ray Brown, joined by Mary G. Brown, his wife, residing at (Street Address) R. F. D. #3 Orleans, (County of) Orange, (State of) Indiana, by occupation a farmer; [engaged in business] farming. (Employer's name and address—or business name and address)

Respectfully Represents: 1. That your petitioner has had his principal place of business [or has resided, or has had _____ domicile] near Bromer, Orange Co., Indiana, within the above judicial district, for a longer portion of the six months immediately preceding the filing of this petition than in any other judicial district.

2. Your petitioner owes debts and is willing to surrender all his property for the benefit of his creditors, except such as is exempt by law, and desires to obtain the benefit of the Act of Congress relating to bankruptcy.

3. That the schedule hereto annexed, marked A [1, 2, 3, 4, 5], and verified by your petitioner's oath, contains a full and true statement of all his debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors and such further statements concerning said debts as are required by the provisions of said Act.

4. That the schedule hereto annexed, marked B [1, 2, 3, 4, 5, 6], and verified by your petitioner's oath, contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Act.

Wherefore Your Petitioner Prays, That he may be adjudged by the Court to be a bankrupt within the purview of said Act.

Chancey Ray Brown,
Mary G. Brown,
Petitioner.

C. R. McBride,
Attorney for Petitioner.

New Albany, Indiana.

United States of America, }
State of Indiana, } ss.
County of Floyd.

Oath for Individual.

I, Chancey Ray Brown, joined by Mary G. Brown, my wife, the petitioning debtor mentioned and described in the foregoing petition, do hereby make solemn oath that the statements contained therein are true according to the best of my knowledge, information and belief.

Chancey Ray Brown,
Mary G. Brown,
Petitioner.

Subscribed and sworn to before me, this 27th day of May, 1940.

(Seal)

Charles R. McBride,
Notary Public.
(Official Character.)

My Com. Ex. May 8, 1942.

(All schedules to be filed in triplicate with this petition.)

9 Schedule A—Statement of All Debts of Bankrupt.

Schedule A-1.

Statement of all Creditors who are to be paid in Full or to Whom Priority is Secured by Act.

Claims which have priority.

Reference to Ledger or Voucher.

Names of Creditors.

Residences. (If unknown, that fact must be stated.)

Where and When Contracted.

Whether claim is contingent, unliquidated or disputed.

Nature and consideration of the debt, and whether contracted as partner or joint contractor and, if so, with whom.

	Amount Due or Claimed	\$ Cts
a. Wages due workmen, servants, clerks, or traveling or city salesmen on salary or commission basis, whole or part time, whether or not selling exclusively for the bankrupt, to an amount not exceeding \$600 each, earned within three months before filing the petition.		
Newton McCart, farm labor, residence my own,		50.00
b. Taxes due and owing to:		
(1) The United States. None.		
(2) The State of Indiana, delinquent two years,		639.00
(3) The county, district or municipality of Orange, which is included in above amount.		
State of		
c. (1) Debts owing to any person, including the United States, who by the laws of the United States is entitled to priority.		
None.		
(2) Rent owing to a landlord who is entitled to priority by the laws of the State of Indiana, accrued within three months before filing the petition, for actual use and occupancy.		
Citizens National Bank, Evansville, Ind.		42.00
Total		731.00

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

These schedules must be executed in triplicate.

10

Schedule A-2.

Creditors Holding Securities.

[N. B.—Particulars of securities held, with dates of same, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by Act of Congress relating to bankruptcy and whether contracted as partner or joint contractor with any other person, and if so, with whom.]

Reference to Ledger or Voucher.

Name of Creditors.

Residences. (If unknown, that fact must be stated.)

Description of Securities.

When and Where debts were contracted.

Whether claim is contingent, unliquidated or disputed.

Value of Amount Due
Securities or Claimed

	\$	Cts	\$	Cts.
Real estate mortgages, joined by wife, State Bank of Hardinsburg, Hardinsburg, Indiana,			3194.05	
Federal Land Bank, Louisville, Kentucky,			696.00	
Chattel mortgage, my own only, or possibly also joined by my wife, Huntingburg, Indiana, Credit Production Association, Huntingburg, Indiana,			9.00	
Total			4609.05	

Chancey Ray Brown,
Petitioner.
Mary G. Brown.

Note.—Give street and number address where possible.

Creditors Whose Claims Are Unsecured.

[N. B.—When the name and residence (or either) of any drawer, maker, indorser or holder of any bill or note, etc., are unknown the fact must be stated, and also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of off-set stated in the schedule of property.]

Reference to Ledger or Voucher.

Names of Creditors.

Residences. (If unknown, that fact must be stated.)

When and Where contracted.

Whether claim is contingent, unliquidated or disputed.

Nature and consideration of the debt; and whether any judgment, bond, bill of exchange, promissory note, etc., and whether contracted as partner or joint contractor, with any other person, and if so, with whom.

Amount Due
or Claimed

	\$	Cts.
Home Loan Finance Company, Bedford, Indiana,	270.00	
American Security Company, Paoli, Indiana	120.00	
Bruner Fertilizer Co., Seymour, Indiana	116.00	
C. E. Wimmer, Orleans, Indiana,	16.00	
Rider Service Station, Campbellsburg, Indiana,	11.00	
C. E. Doak (Doak), Bromer, Indiana,	25.00	
Orange County Bank, Paoli, Indiana,	212.00	
 Total	 770.00	

Chancey Ray Brown,
Petitioner.
Mary G. Brown.

Note.—Give street and number address where possible.

12

Schedule A-4.

Liabilities on Notes or Bills Discounted Which Ought to Be Paid by Drawers, Makers, Acceptors, or Indorsers.

[N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors or indorsers thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills on which the debtor is liable as indorser.]

Reference to Ledger or Voucher.

Names of holders as far as known.

Residences. (If unknown, that fact must be stated.)

Place where contracted.

Whether claim is disputed.

Nature of liability, whether same was contracted as partner or joint contractor, or with any other person; and if so, with whom.

Amount Due
or Claimed

None. \$ Cts.

Total

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Note.—Give street and number address where possible.

Accommodation Paper.

[N. B.—The dates of the notes or bills and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as drawer, maker or acceptor or endorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder known to the debtor should be stated, with his residence. Some particulars as to other commercial paper.]

Reference to Ledger or Voucher.

Names of Holders.

Residence. (If unknown, that fact must be stated.)

Names and residences of persons accommodated.

Places where contracted.

Whether claim is disputed.

Whether liability was contracted as partner or joint contractor, or with any other person; and if so, with whom.

	Amount Due or Claimed
	\$ Cts.
None.	
	Total

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Oath to Schedule A.

State of Indiana } ss.
County of Floyd }

I, Chancey Ray Brown joined by Mary G. Brown, his wife, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the said schedule is a statement of all my debts, in accordance with the Act of Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Subscribed and sworn to before me this 27th day of May, 1940.

Charles R. McBride,
Notary Public.
(Official Character)

My Commission Expires May 8, 1942.

14 Schedule B—Statement of All Property of
Bankrupt.

Schedule B-1.
Real Estate.

Location and Description of all real estate owned by Debtor, or held by him.
Incumbrances thereon, if any, and dates thereof.
Statement of particulars relating thereto.

Estimated Value of
Debtor's Interest

\$ Cts.

A part of the southwest quarter of Section 18 and a part of the northwest quarter of Section 19, all in T. 2 N., R. 2 W.

Also a part of the southwest quarter of Section 19, T. 2 N. R. 2 W., containing in all 125 acres.
(Covered by mortgages)

6000.00

Also part of the northeast quarter of Section 5, T. 1 S., R. 2 E., containing 90 acres. (Unencumbered)

400.00

Total 6400.00

These schedules must be executed in triplicate.

Chancey Ray Brown,
Petitioner.
Mary G. Brown.

Personal Property.

	\$ Cts.
a. Cash on hand	35.00
b. Negotiable and non-negotiable instruments and securities of any description, including stocks in incorporated companies, interests in joint stock companies, and the like (each to be set out separately):	
None.	
c. Stock in trade in business of at of the value of Stock in Producers Association, Orleans, Indiana	10.00
d. Household goods and furniture, household stores, wearing apparel, and ornaments of the person, viz.:	
Contents of home, household effects	50.00
e. Books, prints and pictures, viz.:	
None.	
f. Horses, cows, sheep and other animals (with number of each), viz.:	
Five horses and one colt; five cows; ten sheats, and three spring calves	750.00
g. Automobiles and other vehicles, viz.:	
One Plymouth, 36 model, been wrecked	50.00
h. Farming stock and implements of husbandry, viz.:	
Two tractors; two threshing machines; two corn shreders; two binders; two plows; a disk-harrows; a corn-planter; two mowing machines and small implements	1200.00
i. Shipping and shares in vessels, viz.:	
None.	
j. Machinery, fixtures, apparatus, and tools used in business, with the place where each is situated, viz.:	
None.	
k. Patents, copyrights and trade-marks, viz.:	
None.	

1. Goods or personal property of any other description, with the place where each is situated,
viz.:

None.

Total 2095.00

Note.—If any space is insufficient, annex additional sheets.

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

16

Schedule B-3.

Choses in Action.

	\$ Cts.
a. Debts due petitioner on open account.	
None.	
b. Policies of insurance.	
None.	
c. Unliquidated claims of every nature with their estimated value.	
None.	
4. Deposits of money in banking institutions and elsewhere.	
None.	

Total

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Property in Reversion, Remainder or Expectancy, Including Property Held in Trust for the Debtor or Subject to Any Power or Right to Dispose of or to Charge.

[N. B.—A particular description of each interest must be entered. If all or any of the debtor's property has been conveyed by deed of assignment, or otherwise, for the benefit of creditors, the date of such deed should be stated, the name and address of the persons to whom the property was conveyed, the amount realized from the proceeds thereof, and the disposal of the same, so far as known to the debtor.].

General Interest	Particular Description	Estimated Value of My Interest.
		\$ Cts.
Interest in land.	None.	
Personal property.	None.	
Property in money, stocks, shares, bonds, annuities,, etc.	None.	
Rights and powers, legacies and bequests.	None.	
		Total
		Amounts Realized from Proceeds of Property Conveyed
Property heretofore conveyed for benefit of creditors.	None.	\$ Cts.
What portion of debtor's property has been conveyed by deed of assignment or otherwise for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.	None.	
Attorney's Fees.	None.	

What sum or sums have been paid to counsel, and to whom, for services rendered or to be rendered in this bankruptcy.

18

Schedule B-5.

Property Claimed as Exempt From the Operation of the Act of Congress Relating to Bankruptcy.

[Note—Each item of property must be stated, its valuation, and, if real estate, its location, description and present use.]

	Valuation
	\$ Cts.
1. Property claimed to be exempted by the laws of the United States, with reference to the statute creating the exemption.	
None.	
2. Property claimed to be exempt by State laws, with reference to the statute creating the exemption.	

The petitioner, Chancey Ray Brown, claims as exempt all of the property scheduled B herein, under and pursuant to the laws of the State of Indiana as provided by Section 2-3501 of Burns Revised Statutes of Indiana of 1933, and asks that all of the personal property listed in said schedules be set off to him as exempt property.

Mary G. Brown, wife, is duly and legally domiciled in Northeast Township, Orange County, Indiana, where she resides with her husband, Chancey Ray Brown, and she claims her exemption of \$1000.00 as provided by Section 38-109, Burns Revised Statutes of Indiana, and asks that the same be set off to her.

Total
Chancey Ray Brown, <i>Petitioner.</i>
Mary G. Brown.

Books, Papers, Deeds, and Writing, Relating to
Bankrupt's Business and Estate.

The following is a true list of all books, papers, deeds, and writings relating to my trade, business, dealings, estate and effects, or any part thereof, which, at the date of this petition, are in my possession or under my custody and control, or which are in the possession or custody of any person in trust for me or for my use, benefit or advantage; and also of all others which may have been heretofore, at any time, in my possession, or under my custody or control, and which are now held by parties whose names are hereinafter set forth, with the reasons for their custody of the same.

Books.

None.

Deeds.

The usual deeds to real estate.

Papers.

None.

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Oath to Schedule B.

United States of America
State of Indiana
County of Floyd. } ss.

I, Chancey Ray Brown, joined by Mary G. Brown, my wife, the person who subscribed to the foregoing schedule, do hereby make solemn oath that the, said schedule is a statement of all my property, real and personal, in accordance with the Act onf Congress relating to bankruptcy, according to the best of my knowledge, information, and belief.

Chancey Ray Brown,
Petitioner.

Mary G. Brown.

Subscribed and sworn to before me this 27th day of May, 1940.

(Notarial Seal)

Charles R. McBride,
Notary Public.
(Official Character)

My Commission Expires May 8, 1942.

20 Summary of Debts and Assets

(From the statements of the debtor in Schedules A and B)

Schedule A—

1-a	Wages	50.00
1-b (1)	Taxes due United States	(639.00)
1-b (2)	Taxes due States	(
1-b (3)	Taxes due counties, districts, municipalities	(
1-c (1)	Debts due any person, including the United States, having priority by laws of the United States	
1-c (2)	Rent having priority	42.00
2	Secured claims	4609.05
3	Unsecured claims	770.00
4	Notes and bills which ought to be paid by other parties thereto	
5	Accommodation paper	
	Schedule A, Total	<u>6110.00</u>

Schedule B—

1	Real Estate	6400.00
2-a	Cash on hand	35.00
2-b	Negotiable and non-negotiable instruments and securities	
2-c	Stock in trade	10.00
2-d	Household goods	50.00
2-e	Books, prints and pictures	
2-f	Horses, cows and other animals	750.00
2-g	Automobiles and other vehicles	50.00
2-h	Farming stock and implements	1200.00
2-i	Shipping and shares in vessels	
2-j	Machinery, fixtures and tools	
2-k	Patents, copyrights, trademarks	
2-l	Other personal property	
3-a	Debts due on open accounts	
3-b	Policies of insurance	
3-c	Unliquidated claims	
3-d	Deposits of money in banks and elsewhere	
4	Property in reversion, remainder, expectancy or trust	
5	Property claimed as exempt	\$1000.00
6	Books, deeds, papers	
	Schedule B, Total	<u>8495.00</u>

Chancey Roy Brown,

Petitioner.

Mary G. Brown.

Filed
Aug. 3,
1940.

21 And afterwards to wit at the April Term of said Court on the 3rd day of August, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Comes now Walter S. McIntosh, President of the State Bank of Hardinsburg, and files motion to strike out parts of the bankrupts' schedule, which motion is as follows:

22 IN THE DISTRICT COURT OF THE UNITED STATES.

(Caption—554)

MOTION TO STRIKE OUT PARTS OF BANKRUPTS' SCHEDULE.

To the Honorable Robert C. Baltzell, Judge of the District Court of the United States:

Comes now Walter S. McIntosh, who being first duly and legally sworn according to law, upon his oath, says that he is the president of State Bank of Hardinsburg, a banking corporation of the Town of Hardinsburg, Washington County, Indiana, organized and conducting business under and by virtue of the laws of the State of Indiana, and that he is duly authorized to make this motion for and on behalf of said corporation.

He now, therefore, moves the court to strike out of the schedule of said bankrupt petitioners all of that portion thereof which relates to the real estate of said petitioners which is thus described: A part of the south west quarter of section 18 and a part of the northwest quarter of section 19 all in town 2 north, r 2 w. Also a part of the south west quarter of section 19, t. 2 n. r. 2 w, Containing in all 125 acres, for the reason that said described real estate is not the property of said bankrupt petitioners or either of them but that the same is the property of State Bank of Hardinsburg, petitioner herein.

And said affiant to substantiate the said claim of said Bank and for the purpose of showing the truth of the statement that said bank is the owner of said described real estate makes the following statement under his oath aforesaid and files herewith certain exhibits which are properly marked, Viz: That on the 19th day of February, 1938, 23 the Bankrupt Petitioners became indebted to the State

Bank of Hardinsburg, in the sum of Two thousand Five Hundred Dollars, the truth of which is evidenced by their certain promissory note, for said sum and of said date, a copy of which note is filed with this motion and marked exhibit A. That for the purpose of securing the payment of said note, said Bankrupt Petitioners executed to said Bank their certain mortgage on the following described real estate in Orange County, in the State of Indiana, to wit: A part of the southwest quarter of section eighteen and a part of the north-west quarter of section nineteen, all in township two (2) north, range two east, described as follows Viz: Beginning at a point 35.68 rods north of the south east corner of the south-west quarter of section eighteen, township two north, range two east and running ninety-nine rods west, thence south 82.77 rods, thence west seventy-four rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the north-west quarter of section nineteen, township two north, range two east, thence north 111.18 rods to the place of beginning containing eighty eight acres, more or less. Also a part of the south east quarter of section nineteen township two north and range two east, described as follows, to-wit: Beginning at the north-east corner of said south east quarter and running thence west 93 $\frac{1}{2}$ rods, more or less to a point which is 66 $\frac{1}{2}$ rods east of the north-west corner of said quarter section thence south sixty rods, thence east to the east line of said section, thence north sixty rods to the place of beginning, containing thirty-seven acres, more or less, which said mortgage was made subject to a mortgage for the sum of \$725.00 in favor of the Federal Land Bank of Louisville, Kentucky, which said described real estate was then the only real estate in said sections so owned by the said Bankrupt Petitioners and is the identical real estate which said petitioners have undertaken to describe in their Bankrupt petition and schedule herein. A copy of which said mortgage is filed herewith, made part here-of and marked exhibit B.

24 Your affiant further says upon his oath aforesaid that afterwards to-wit: on the 4th day of March, 1939 the said State Bank of Hardinsburg filed their certain proceedings in the Orange Circuit Court of Orange County, Indiana, for the collection of said note and the foreclosure of said mortgage, that judgment was rendered in said cause of action and said mortgage ordered foreclosed to pay and satisfy said judgment by said court on Nov. 20, 1939. A

decrees was issued and said land sold to said Bank on the 25th day of April, 1940 and a deed executed and delivered to the said Bank on the 1st day of June, 1940, all before the filing of the petition of bankruptcy by the Bankrupt Petitioners herein which said petition was filed by them on the 4th day of June, 1940.

That by reason of said sale and the execution of said deed by the sheriff of Orange County, Indiana the said Bank of Hardinsburg became the owner of the real estate so described in said Bankrupts' petition prior to the time of the filing of their petition.

Petitioner further says that the description of said real estate is erroneous in this to-wit: that the said schedule so filed by said bankrupt petitioners recite the fact that said real estate is situate in range two west when in truth and in fact the same is located in range two east.

That a certified copy of said judgment is filed herewith, made part hereof and marked exhibit C.

That the facts herein recited show that before the filing of the bankrupts petition the said State Bank of Hardinsburg was the owner of the real estate described in said Bankrupts' petition and was not the property of said bankrupts, and that the recital that the said bankrupts were indebted to said bank on account of the execution of said note and mortgage are untrue.

Wherefore said affiant, for and on behalf of said bank prays that said statement so made by said Bankrupts relative to said indebtedness and in relation to the ownership by them of said real estate be stricken from their said schedule and that the same be not considered in determining the relations between said bankrupts and the said State Bank of Hardinsburg, and for all other proper relief.

Walter S. McIntosh,
President of the State Bank of
Hardinsburg.

Subscribed and sworn to before me, this 31st day of July, 1940.

(Seal)

Charles R. Ratts,

Notary Public.

Com. Exp. 9/29/42.

EXHIBIT A.

Hardinsburg, Ind., February 19, 1938.

One Year after date, I, we, or either of us promise to pay to the order of State Bank of Hardinsburg Two thousand five hundred and no/100 Dollars negotiable and payable at the State Bank of Hardinsburg, Hardinsburg, Indiana, without any relief whatever from Valuation or Appraisement Laws of the State of Indiana, for value received, with interest at 6 per cent. per annum payable semi-annually from date until maturity ~~and 8% per annum after maturity~~ until paid; and Attorney's Fees. The drawer and endorsers severally waive presentment for payment, protest, notice of protest and non-payment of this note.

Chancey R. Brown,
Mary G. Brown.

No. 8987

Due Feb. 19, 1939.

EXHIBIT B.

Mortgage.

This Indenture Witnesseth, That Chancey R. Brown and Mary G. Brown, his wife, of Orange County in the State of Indiana, Mortgage and Warrant to State Bank of Hardinsburg, of Washington County, in the State of Indiana, the following described real estate in Orange County in the State of Indiana, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances:

Also, a part of the southeast quarter of section 19, in township 2 north and range 2 east, described as follows,

to-wit: Beginning at the northeast corner of said southeast quarter and running thence west 93 $\frac{1}{2}$ rods more or less to a point which is 66 $\frac{1}{2}$ rods east of the northwest corner of said quarter-section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less..

This mortgage is made subject to a mortgage on the last above described real estate in the sum of approximately Seven Hundred Twenty Five (\$725.00) Dollars, in favor of the Federal Land Bank of Louisville, Kentucky which mortgage grantees assume and agree to pay.

to secure the payment, when the same shall become due, of one certain promissory note bearing even date herewith, for the sum of Twenty Five Hundred (\$2500.00) Dollars, executed by Chancey R. Brown and Mary G. Brown, husband and wife, and payable to the order of the State Bank of Hardinsburg, of Hardinsburg, Indiana, One Year after date, with interest thereon at the rate of six per cent (6%) per annum, payable Semi-annually; said note providing for the payment of expenses of collection, including attorney fees and waiving relief from valuation and appraisement laws.

28 And the mortgagors expressly agree to pay the sum of money above secured, without relief from valuation or appraisement laws; and upon failure to pay any one of said notes, or any part thereof, at maturity, or the interest thereon, or any part thereof, when due, or the taxes or insurance as hereinafter stipulated, then all of said notes are to be due and collectible, and this mortgage may be foreclosed accordingly. And it is further expressly agreed, that until all of said notes are paid, said mortgagors will keep all legal taxes and charges against said premises paid as they become due, and will keep the buildings thereon insured for the benefit of the mortgagee, as their interest may appear, and the policy duly assigned to the mortgagee, to the amount of Two Thousand (\$2000.00) Dollars, and failing to do so, said mortgagee, may pay said taxes or insurance, and the amount so paid, with 6 per cent interest thereon, shall be a part of the debts secured by this mortgage.

In Witness Whereof, the said mortgagors have hereunto set their hands and seals this 19th day of February, 1938.

Chancey R. Brown (Seal)
Mary C. Brown (Seal)

State of Indiana } ss.
Washington County }

Before me, the undersigned, a Notary Public in and for said County, this 19th day of February, 1938, came Chancey R. Brown and Mary G. Brown, husband and wife, and acknowledged the execution of the foregoing instrument.

Witness my hand and Notarial Seal.

Frances Porter,

(Seal)

Notary Public.

Comm. Exp. Dec. 15, 1940.

29

EXHIBIT C.

State Bank of Hardinsburg }
#10039 vs. }
Chancey R. Brown, Mary G. }
Brown. }

Come again the parties by their attorneys as heretofore and this cause now coming on for trial the same is submitted to the court for trial without the intervention of a jury. And the court having heard the evidence and being sufficiently advised in the premises finds for the defendant Central Rubber & Supply Co. and that there is due said defendant from the defendant Chancey R. Brown on the judgment set out in the complaint the sum of fifty dollars (\$50.00) from the sale of the real estate belonging to Chancey R. Brown without relief from valuation and appraisement laws. Which said debt and claim of the said defendant is a lien against the real estate hereinafter described, owned by Chancey R. Brown, and herein sought to be foreclosed, superior to the claim and debt of the defendant Orange County Bank and of the claim and debt of the plaintiff hereinafter found and determined.

The court further finds for the plaintiff on its complaint herein that there is due the plaintiff from the defendants Chancey R. Brown and Mary G. Brown on the note herein sued on the sum of \$2762.50 and the further sum of \$170.00 as a fee for its attorney, a total of \$2932.50, all without relief from valuation and appraisement laws; that said sums

are secured by the mortgage sought to be foreclosed by the complaint; that said mortgage was duly recorded in the office of the recorder of Orange County, Indiana, on the 23rd day of February 1938 and that said plaintiff is entitled to have said mortgage foreclosed against the defendants Chancey R. Brown and Mary G. Brown. Which said debt and claim of the said plaintiff herein is second and junior to the claim and debt of the defendant Central Rubber & Supply Co. but is superior to the debt and claim of the 30 defendant Orange County Bank. The court further finds for the defendant Orange County Bank as alleged in the complaint herein and that there is due said defendant from the defendant Chancey R. Brown and Mary G. Brown on the judgment set out in said complaint the sum of \$211.55 without relief from valuation and appraisement laws. Which said claim and debt of the said defendant Orange County Bank is second and junior to the debt and claims of both the defendant Central Rubber, & Supply Co. and the plaintiff herein.

It is therefore considered and adjudged by the court that the defendant Central Rubber & Supply Co. recover of and from the defendant Chancey R. Brown the sum of \$50.00 together with its costs herein laid out and expended and taxed at _____ dollars, without relief from valuation and appraisement laws, the said judgment to bear interest at the rate of six per cent per annum from the date of the rendition thereof.

It is therefore further considered and adjudged by the court that the defendant Orange County Bank recover of and from the defendant Chancey R. Brown and Mary G. Brown the sum of \$211.55 together with its costs herein laid out and expended and taxed at _____ dollars, without relief from valuation and appraisement laws, the said judgment to bear interest at the rate of six per cent per annum from the 13 day of September, 1938.

It is further considered and adjudged by the court that the plaintiff recover of and from the defendants Chancey R. Brown and Mary G. Brown the sum of \$2932.50, and also its costs and charges in this case laid out and expended, taxed at _____ dollars, without any relief whatever from valuation laws, the judgment to bear interest at the rate of six per cent per annum from the date of the rendition thereof until paid.

31 And it is further ordered, considered and adjudged by the court that the equity of redemption of the defendants Chancey R. Brown and Mary G. Brown, and all persons claiming by, through or under them in and to said mortgaged premises, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north and range 2 east, described as follows, to-wit: beginning at the northeast corner of said southeast quarter and running west 93 $\frac{1}{2}$ rods more or less to a point which is 66 $\frac{1}{2}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less.

be and the same is hereby forever barred and foreclosed, and that said real estate and all of the right, title, interest and claim of said defendants Chancey R. Brown and Mary G. Brown and all persons claiming from, under or through them in and to the same, or so much thereof as may be necessary for said purpose shall be sold by the sheriff of this county as lands are sold on execution; and the process arising from said sale, the sheriff is ordered and directed to apply in the manner following, to-wit: First, the payment of all the costs accrued and the costs of said sale.

Second, to the payment of the amount found due the defendant Central Rubber & Supply Co. from Chancey R. Brown herein being the amount of the judgment herein, before rendered, together with interest from this date.

Third, to the payment of the amount found due the plaintiff herein, being the amount of the judgment heretofore rendered, together with interest from this date.

Fourth, to the payment of the amount found due the defendant Orange County Bank herein, being the

amount of the judgment hereinbefore rendered, together with interest from this date, a total of \$226.35.

The overplus if any there be, remaining after the payment of the foregoing judgments, interest and costs, to be paid by the sheriff to the Clerk of this Court for the use of the parties lawfully authorized to receive the same; and in the event said mortgaged property shall fail to sell for a sum sufficient to pay and satisfy said judgments, principals, interest and costs, the residue thereof remaining unpaid shall be levied of the goods and chattels, lands and tenements of the defendants Chancey R. Brown and Mary G. Brown, subject to execution, and sale thereof shall be made without relief from valuation and appraisement laws.

It is further ordered by the court, that a duly certified copy of this decree under the hand of the Clerk and the seal of this court, shall be sufficient authority to the Sheriff to execute the same.

O. K. J. L. Tucker.

State of Indiana } ss.
County of Orange }

I, William O. Ritter, Clerk of the Orange Circuit Court, do hereby certify that the above and foregoing is a true and complete copy of the proceedings had in said cause on November 20, 1939, and the same appears of record now on file in my office.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court this the 5th day of March, 1940, at Paoli, Indiana.

(Seal)

William O. Ritter,
Clerk Orange Circuit Court.

SHERRIFF'S DEED.

This Conveyance, made this 1st day of June, 1940, Witnesseth: That Noble Ellis, as Sheriff of Orange County, in the State of Indiana, by virtue of a Certificate of Purchase issued upon a sale by virtue of a Decree issued out of the Circuit Court of Orange County, in the 42nd Judicial Circuit of the State of Indiana, upon a judgment rendered by the Orange Circuit Court in the 42nd Judicial Circuit of the State of Indiana wherein State Bank of Hardinsburg was plaintiff and Chancey R. Brown and Mary G. Brown were defendant, Conveys to State Bank of Hardinsburg, of Washington County in the State of Indiana, for sum of Three Thousand (\$3,000.00) Dollars, all the following described Real Estate in Orange County, in the State of Indiana, to-wit:

A part of the south west quarter of section eighteen (18), and a part of the north-west quarter of section nineteen (19), all in township two (2) north range two (2) east, bounded as follows: Beginning at a point 35.68 rods north of the south east corner of the south west quarter of section 18, township 2 north, range 2 east, and running ninety-nine (99) rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section nineteen, same town and range, thence north 111.18 rods to the place of beginning, containing 88 acres more or less.

Also a part of the south east quarter of section 19 in township 2 north, range 2 east, described as follows, to-wit: Beginning at the north west corner of said south east quarter and running thence west 93 $\frac{1}{2}$ rods more or less to a point which is 66 $\frac{1}{2}$ rods east of the north west corner of said quarter section, thence south sixty rods, thence east to the east line of said section, thence north sixty rods to the place of beginning, containing 37 acres, more or less.

Noble Ellis,

Sheriff, Orange County, Indiana.

D. F. R. 3.00.

Affidavit.

State of Indiana } ss.
Orange County }

Before me, the undersigned Clerk of the Orange Circuit Court in and for said County and State, this 1st day of June 1940 personally came Noble Ellis, Sheriff of Orange County, Indiana, and as such Sheriff acknowledged the execution of the annexed Deed.

Witness my hand and official Seal.

(Seal)

William O. Ritter,
Clerk, Orange Circuit Court, Ind.

10206

Sheriff's Deed

Noble Ellis, Sheriff
of Orange County, Indiana

to

State Bank of Hardinsburg
Indexed compared

Received for records the 1st day of June 1940 at 10:30 o'clock A. M. and recorded in Record 85 page 361.

Garrett Ferguson,
Recorder of Orange County.

Duly entered for Taxation this 1 day of June, 1940.

A. R. Gassaway,
Auditor of Orange County, Ind.

34 State of Indiana } ss.
Orange County }

I, Garrett Ferguson, do hereby certify that I am the duly elected, qualified, and acting Recorder of Orange County, state of Indiana; and I further certify that the above and foregoing deed is a true, exact, and complete copy of the deed which is recorded in my office in deed record 85 at page 361.

In Witness Whereof, I have hereunto set my hand and affixed the seal of my office this, the 2 day of August, 1940, at Paoli, Indiana.

(Seal)

Garrett Ferguson,
Recorder, Orange County, Indiana.

35 And afterwards to wit at the April Term of said Court on the 22nd day of August, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Come now the debtors, by their attorney Charles R. McBride, and file motion in two paragraphs to correct Scrivener's error in description of real estate and to dismiss plaintiff's motion to strike vital real estate from petitioners' schedule, which motion is as follows:

36. IN THE DISTRICT COURT OF THE UNITED STATES

Filed
Aug. 27
1940.

For the Southern District of Indiana.

New Albany Division.

State Bank of Hardinsburg
vs.
Chancey R. Brown, Mary G.
Brown. } No. 10039.
Re: Mortgage foreclosure,
Orange Circuit Court.

Hon. Robert C. Baltzell, Judge:

MOTION OF DEBTOR-DEFENDANTS — IN TWO PARAGRAPHS — TO CORRECT SCRIVENOR'S ERROR IN DESCRIPTION OF REAL ESTATE — TO DISMISS PLAINTIFF'S MOTION TO STRIKE VITAL REAL ESTATE FROM PETITIONERS' SCHEDULE.

1. These petitioners would have no motive and obviously had no intention to misdescribe the real estate owned and mortgaged by them as being twenty-four miles west of its actual location, the description Range 2 West was a regrettable scrivenor's error, which misled nobody, and, therefore, they move that where the description of real estate appearing in debtors' schedules cause the same to read "R. 2 W.", such schedules be corrected to read R. 2 E., removing this confusion from these proceedings.

2. These defendants move that plaintiff's motion to strike real estate, which is vital to an equitable adjudication of this proceeding in Bankruptcy under the benevolent provisions of the Frazier-Lemke Moratorium Act of the Congress, which striking would work grave injustice and potential harm to other creditors, be dismissed for reasons as follows, to wit:

(a) The initiation of the foreclosure proceedings in the Orange County Circuit Court, as disclosed by the certified copy of the record filed in support of the pending motion to strike, is fatally defective in failing to make all parties in interest defendants. Whereas, the alleged judgment of the court recites that the Central Rubber & Supply Company, unlocated, is a defendant, the Orange County Bank, indefinitely located, is a defendant, neither was named as such in plaintiff's complaint; and it is not shown, of record, that they had their day in court, though the judgment names them as prior and subordinate lien holders, which suggests that they may have appeared and defended.

(b) The certified copy of mortgage given to the plaintiff by the defendants named in the complaint, recites that it is subsequent in time and inferior in equities to a prior mortgage held by the Federal Land Bank of Louisville, Kentucky, reciting further, quote, "which mortgage grantees assume and agree to pay", said Bank was omitted as a party defendant, also omitted as a party in interest from the judgment of the state court, raising the implication of payment of said prior mortgage, though inquiry made by the undersigned of said mortgagee discloses that said loan, #8914 on the records of the Federal Land Bank, has not been discharged and is being liquidated by the mortgagors in accordance with its terms, to the entire satisfaction of the mortgagee.

(c) In view of the foregoing recital of facts, the judgment of the state court, entered in this foreclosure action, was grossly defective in that the court entertained a foreclosure suit which omitted to name as a defendant a vital party in interest, and, without its day in court, entered judgment without making mention of such prior lien holder.

(d) The certified copy of the alleged deed made by the Sheriff is so clumsily phrased as to suggest very great haste, evidently, with which it was drawn, executed and filed for record, all in one day, in order to antedate some

anticipated activity, and became fatally defective in that it omitted to recite appurtenances, was not made subject to existing liens, tax and otherwise, and fails to disclose that it was examined and approved by the Court.

Moreover, No. 554 was initiated in May, 1940, of which action the plaintiff had knowledge, the debtors (mortgagors) are in possession of the real estate involved in this proceeding, an order restraining any action by the Sheriff, and others, relative thereto has been issued, and the debtor-mortgagors cannot be dispossessed without approval of the Federal courts, which it is confidently assumed will be withheld. See *Kalb et ux. v. Feuerstein et ux.* 308 U. S. 433. (See also, *Wright v. Union Central Life Insurance Company*, 304 U. S. 508; and *McCulloch v. Schafer*, 100 F. 2d 939).

Respectfully submitted,

(Signed) C. R. McBride,
Attorney.

38. And afterwards to wit at the April Term of said Court on the 10th day of September, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Filed
Sept. 10,
1940.

Comes now the petitioner, State Bank of Hardinsburg, by its attorney, Frank S. Houston, and files an amended motion in the above entitled cause, which amended motion is as follows:

39. IN THE DISTRICT COURT OF THE UNITED STATES.

• • (Captions—554 & 10039) • •

AMENDED MOTION TO STRIKE OUT PARTS OF BANKRUPT'S SCHEDULE.

1. Comes now Walter S. McIntosh, who being first duly and legally sworn according to law, upon his oath, says that he is the president of State Bank of Hardinsburg, a banking corporation of the Town of Hardinsburg, Washington County, Indiana, organized and conducting business under and by virtue of the laws of the State of Indiana, and that he is duly authorized to make this motion for and on behalf of said corporation.

2. He now, therefore, by way of amended motion moves the court to strike out of the schedule of said bankrupt petitioners all of that portion thereof which relates to the real estate of said petitioners which is thus described: A part of the south west quarter of section 18 and a part of the northwest quarter of section 19 all in town 2 north, r 2 w. Also a part of the south west quarter of section 19, t. 2 n. r. 2 w. Containing in all 125 acres, for the reason that said described real estate is not the property of said bankrupt petitioners or either of them but that the same is the property of State Bank of Hardinsburg, petitioner herein.

And said affiant to substantiate the said claim of said Bank and for the purpose of showing the truth of the statement that said bank is the owner of said described real estate makes the following statement under his oath aforesaid and files herewith certain exhibits which are properly marked, viz.: That on the 19th day of Feb-
40 ruary, 1938, the Bankrupt Petitioners became indebted to the State Bank of Hardinsburg, in the sum of Two Thousand Five Hundred Dollars, the truth of which is evidenced by their certain promissory note, for said sum and of said date, a copy of which note is filed with this motion and marked Exhibit A. That for the purpose of securing the payment of said note said Bankrupt Petitioners executed to said Bank their certain mortgage on the following described real estate, in Orange County, in the State of Indiana, to wit: A part of the southwest quarter of section eighteen and a part of the north-west quarter of section nineteen, all in township two (2) north, range two east, described as follows, viz.: Beginning at a point 35.66 rods north of the south east corner of the south-west quarter of section eighteen, township two north, range two east and running ninety-nine rods west, thence south 82.77 rods, thence west seventy-four rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the north-west quarter of section nineteen, township two north, range two east, thence north 111.18 rods to the place of beginning containing eighty eight acres, more or less. Also a part of the south east quarter of section nineteen township two north and range two east, described as follows, to-wit: Beginning at the north-east corner of said south east quarter and running thence west 93 $\frac{1}{2}$ rods, more or less to a point which is 66 $\frac{2}{3}$ rods east of the north-west corner of

said quarter section, thence south sixty rods, thence east to the east line of said section, thence north sixty rods to the place of beginning, containing thirty-seven acres, more or less, which said mortgage was made subject to a mortgage for the sum of \$725.00 in favor of the Federal Land Bank of Louisville, Kentucky, which said described real estate was then the only real estate in said sections so owned by the said Bankrupt Petitioners and is the identical real estate which said petitioners have undertaken to describe in their Bankrupt petition and schedule herein. A copy of which said mortgage is filed herewith, made part hereof and marked Exhibit B.

41 Your affiant further says upon his oath aforesaid that afterwards to-wit: on the 4th day of March, 1939 the said State Bank of Hardinsburg filed their certain proceedings in the Orange Circuit Court of Orange County, Indiana, for the collection of said note and the foreclosure of said mortgage.

3. That a certified copy of said complaint in foreclosure is filed herewith, made part hereof and marked Exhibit C.

4. That afterwards, to-wit: On the 25th day of September, 1939, the plaintiff filed their amended complaint wherein Orange County Bank and Central Rubber & Supply Company were made parties, and all parties appeared by counsel.

5. A certified copy of said amended complaint is filed herewith, made part hereof and marked Exhibit D.

6. That on the 20th day of November, 1939, judgment of foreclosure was rendered in said cause of action, and said mortgage ordered foreclosed and said land sold, to pay and satisfy said judgment. All of which is shown by the transcript of the proceedings to foreclose said mortgage, which transcript is filed herewith, made part hereof and marked Exhibit E.

A decree of foreclosure was issued and said land sold to said Bank on the 25th day of May, 1940 and a deed executed and delivered to the said Bank on the 1st day of June, 1940, all before the filing of the petition in bankruptcy by the Bankrupt Petitioners herein which said petition was filed by them on the 4th day of June, 1940.

That by reason of said sale and the execution of said deed by the sheriff of Orange County, Indiana, the said Bank of Hardinsburg became the owner of the real estate so described in said Bankrupts' petition prior to the time of the filing of their petition.

Amended Motion to Strike.

Petitioner further says that the description of said real estate is erroneous ~~in this to-wit~~: that the said schedule so filed by said bankrupt petitioners recite the fact that said real estate is situate in range two west when in truth 42 and in fact the same is located in range two east.

That the facts herein recited show that before the filing of the bankrupts petition the said State Bank of Hardinsburg was the owner of the real estate described in said Bankrupts' petition and was not the property of said bankrupts', and that the recital that the said bankrupts' were indebted to said bank on account of the execution of said note and mortgage are untrue.

Wherefore said affiant, for and on behalf of said bank prays that said statement so made by said Bankrupts' relative to said indebtedness and in relation to the ownership by them of said real estate be stricken from their said schedule and that the same be not considered in determining the relations between said bankrupts and the said State Bank of Hardinsburg, and for all other proper relief.

Walter S. McIntosh,
*President of the State Bank of
Hardinsburg.*

Subscribed and sworn to before me, this 6th day of September, 1940.

(Seal)

Charles R. Ratts,

Notary Public.

Com. Exp. 9/29/42.

43

EXHIBIT "C".

State of Indiana, { ss.
Orange County.

IN THE ORANGE CIRCUIT COURT,

February Term, 1939.

State Bank of Hardinsburg }
v.s. }
Chancey R. Brown,
Mary G. Brown.

The plaintiff complains of the defendants and for cause of action alleges that the plaintiff is a banking corporation duly and legally organized and conducting business under and by virtue of the banking laws of the State of Indiana; that on the 19th day of February, 1938 the said defendants became indebted to plaintiff in the sum of Twenty Five Hundred Dollars (\$2500.00) by their said promissory note of that date, a copy of which said note is filed herewith, made part hereof and marked Exhibit "A".

Plaintiff further avers that to secure the payment of said note, the defendants did on said date, execute and deliver to plaintiff their said mortgage of that date by which they conveyed to plaintiff the following described real estate in the county of Orange, in the State of Indiana, to-wit:

A part of the southwest quarter of Section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north, range 2 east, described as follows, to-wit: Beginning at the northeast corner of said southeast quarter and running thence west 93 $\frac{1}{2}$ rods more or less to a point which is 66 $\frac{1}{2}$ rods east of the northwest cor-

ner of said quarter section, thence south 60 rods thence east to the east line or said section, thence north 60 rods to the place of beginning containing 37 acres more or less.

That said mortgage was duly entered for record in the office of the Recorder of Orange County, Indiana and was, on the 23rd day of February, 1938, duly recorded in Mortgage Record 43 at pages 303-304, a copy of which said mortgage is filed herewith, made part of this complaint and marked Exhibit "B".

That there is now due and unpaid on said mortgage, the sum of Twenty Six Hundred Fifty Dollars (\$2650.00).

That said note provides for the payment of attorney fees and a reasonable attorney fee for plaintiff's attorney herein would be One Hundred Sixty Dollars (\$160.00).

Wherefore, plaintiff sues and demands judgment for Three Thousand Dollars (\$3000.00) and ask that said mortgage may be foreclosed and said real estate be ordered sold to pay and satisfy plaintiff's said claim and debt, for costs and for all other proper relief.

Frank S. Houston,
Attorney for Plaintiff.

45

EXHIBIT "A".

Hardinsburg, Ind. February 19, 1938

\$2500.00

One Year after date, I, we, or either of us promise to pay to the order of

Bank of Hardinsburg

Two thousand five hundred and no/100. Dollars Negotiable and payable at the Bank of Hardinsburg, Hardinsburg, Indiana, without any relief whatever from Valuation and Appraisement Laws of the State of Indiana, for value received, with interest at 6 per cent, per annum payable semi-annually, from date until maturity and 8% per annum after maturity until paid, and Attorney's Fees. The drawer and endorsers severally waive presentment for payment, protest, notice of protest and non payment of this note.

Chancey R. Brown
Mary G. Brown
Secured by Real estate Mortgage.

No. 8987

Due Feb. 19, 1939

EXHIBIT "B".

Mortgage.

This Indenture Witnesseth, That Chancey R. Brown and Mary G. Brown, his wife, of Orange County in the State of Indiana, Mortgage and Warrant to State Bank of Hardinsburg, of Washington County in the State of Indiana, the following described real estate in Orange County in the State of Indiana, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west .74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north, and range 2 east, described as follows, to-wit: Beginning at the northeast corner of said southeast quarter and running thence west $93\frac{1}{2}$ rods more or less to a point which is $66\frac{1}{2}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning, containing 37 acres more or less.

This mortgage is made subject to a mortgage on the last above described real estate in the sum of approximately Seven Hundred Twenty Five (\$725.00) Dollars, in favor of the Federal Land Bank of Louisville, Kentucky which mortgage grantees assume and agree to pay.

to secure the payment, when the same shall become due, of one certain promissory note bearing even date herewith, for the sum of Twenty-five Hundred (\$2500.00) Dollars, executed by Chancey R. Brown and Mary G. Brown, husband and wife, and payable to the order of the State Bank of Hardinsburg, of Hardinsburg, Indiana, One Year after date, with interest thereon at the rate of six per cent (6%) per annum, payable semi-annually said note providing for the payment of expenses of collection, including attorney

fees and waiving relief from valuation and appraisement laws.

And the mortgagors expressly agree to pay the sum of money above secured, without relief from valuation or appraisement laws; and upon failure to pay any one of said notes, or any part thereof, at maturity, or the interest thereon, or any part thereof, when due, or the taxes or insurance as hereinafter stipulated, then all of said notes are to be due and collectible, and this mortgage may be foreclosed accordingly. And it is further expressly agreed, that until all of said notes are paid, said mortgagors will keep all legal taxes and charges against said premises paid as they become due, and will keep the buildings thereon insured for the benefit of mortgagee, as their interest may appear, and the policy duly assigned to the mortgagee, to the amount of Two Thousand (\$2000.00) Dollars, and failing to do so, said mortgagee may pay said taxes or insurance, and the amount so paid, with 6 per cent interest, shall be a part of the debt secured by this mortgage.

In Witness Whereof, the said mortgagors have hereunto set their hands and seal this 19th day of February, 1938:

Chancey R. Brown (Seal)
Mary G. Brown (Seal)

State of Indiana, } ss.
Washington County.

Before me, the undersigned, a Notary Public in and for said County, this 19th day of February, 1938, came Chancey R. Brown and Mary G. Brown, husband and wife, and acknowledged the execution of the foregoing instrument.

Witness my hand and Notarial Seal.
(Seal)

Frances Porter,
Notary Public.

Com. Exp. Dec. 15, 1940.

48 State of Indiana, } ss.
County of Orange. }

I, William O. Ritter, Clerk of the Orange Circuit Court, do hereby certify that the foregoing is a true and complete copy of the complaint filed March 4, 1939, in said court in the cause of the State Bank of Hardinsburg *vs.* Chancey R. Brown, *et al.*, #10039.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court at Paoli, Indiana, this the 3rd day of September, 1940.

(Seal)

William O. Ritter,
Clerk Orange Circuit Court.

49

EXHIBIT "D".

State of Indiana, } ss.
Orange County. }

IN THE ORANGE CIRCUIT COURT,

September Term, 1939.

State Bank of Hardinsburg
vs.
Chancey R. Brown, Mary G. Brown,
Orange County State Bank, Central
Rubber & Supply Company. } 10039

The plaintiff complains of the defendant and for cause of action alleges that the plaintiff is a banking corporation duly and legally organized and conducting business under and by virtue of the banking laws of the State of Indiana; that on the 19th day of February, 1938 the defendants, Chancey R. Brown and Mary G. Brown became indebted to this plaintiff in the sum of twenty-five hundred dollars (\$2500.00) by their certain promissory note, of that date, a copy of which said note is filed herewith, made part of this complaint and marked exhibit A.

The plaintiff further avers that to secure the payment of said note, the defendants did on said date, execute and deliver to plaintiff their said mortgage of that date by

which they conveyed to plaintiff the following described real estate in the county of Orange, in the State of Indiana, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, 50 more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north, range 2 east, described as follows, to-wit: Beginning at the northeast corner of said southeast quarter and running thence west 93 $\frac{1}{2}$ rods more or less to a point which is 66 $\frac{1}{2}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less.

That said mortgage was duly entered for record in the office of the Recorder of Orange County, Indiana and was, on the 23rd day of February, 1938, duly recorded in Mortgage Record 43 at pages 303-304, a copy of which said mortgage is filed herewith, made part of this complaint and marked Exhibit "B".

That there is now due and unpaid on said mortgage, the sum of Twenty Six Hundred Fifty Dollars (\$2650.00).

That said note provides for the payment of attorney fees and that a reasonable attorney fee for plaintiff's attorney herein would be One Hundred Sixty Dollars (\$160.00).

Plaintiff further says that on the 22nd day of September 1930 the defendant Central Rubber and Supply Company obtained a judgment against the defendant Chancey R. Brown, in the Orange Circuit Court of Orange County, Indiana for the sum of \$71.06 which said judgment is unpaid and in full force, and effect and further alleges that the defendant, Orange County State Bank obtained a judgment against the defendants Chancey R. Brown and Mary G. Brown for the sum of \$211.55, which said judgment is in full force and effect. Each of said judgments being liens against said real estate junior and second to the lien of the

plaintiff herein. That said parties are made parties hereto for the purpose of protecting any interest they may have in the subject matter of this action.

51 Wherefore, plaintiff sues and demands judgment for Three Thousand Dollars (\$3000.00) and ask that said mortgage may be foreclosed and said real estate be ordered sold to pay and satisfy plaintiff's said claim and debt, for costs and for all other proper relief.

Frank S. Houston,
Attorney for Plaintiff.

52

Hardinsburg, Ind., February 19, 1938.

\$2500.00

One Year after date, I, we, or either of us promise to pay to the order of

Bank of Hardinsburg

Two Thousand Five Hundred and no/100 Dollars

Negotiable and payable at the Bank of Hardinsburg, Hardinsburg, Indiana, without any relief whatever from Valuation or Appraisement Laws of the State of Indiana, for value received, with interest at 6 per cent. per annum payable semi-annually from date until maturity and 8% per annum after maturity until paid, and Attorney's Fees. The drawer and endorsers severally waive presentment for payment, protest, notice of protest and non-payment of this note.

No. 8987.

Due Feb. 19, 1939.

Chancey R. Brown,
Mary C. Brown.

Secured by
Real Estate
Mortgage

Exhibit "B".

EXHIBIT "B".

Mortgage.

This Indenture Witnesseth, That Chancey R. Brown and Mary G. Brown, his wife, of Orange County in the State of Indiana, Mortgage and Warrant to State Bank of Hardinsburg, of Washington County, in the State of Indiana, the following described real estate in Orange County in the State of Indiana, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west, thence south 82.7 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north and range 2 east, described as follows, to-wit: Beginning at the northeast corner of said southeast quarter and running thence west 93 $\frac{1}{2}$ rods more or less to a point which is 66 $\frac{1}{2}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning, containing 37 acres more or less.

This mortgage is made subject to a mortgage on the last above described real estate in the sum of approximately Seven Hundred Twenty Five (\$725.00) Dollars, in favor of the Federal Land Bank of Louisville, Kentucky which mortgage grantees assume and agree to pay.

to secure the payment, when the same shall become due, of one certain promissory note bearing even date herewith, for the sum of Twenty Five Hundred (\$2500.00) Dollars, executed by Chancey R. Brown and Mary G. Brown, husband and wife, and payable to the order of the State Bank of Hardinsburg, of Hardinsburg, Indiana, One Year 54 after date, with interest thereon at the rate of six per cent (6%) per annum, payable semi-annually; said note

providing for the payment of expenses of collection, including attorney fees and waiving relief from valuation and appraisal laws.

And the mortgagors expressly agree to pay the sum of money above secured, without relief from valuation or appraisal laws; and upon failure to pay any one of said notes, or any part thereof, at maturity or the interest thereon, or any part thereof, when due, or the taxes or insurance as hereinafter stipulated, then all of said notes are to be due and collectible, and this mortgage may be foreclosed accordingly. And it is further expressly agreed, that until all of said notes are paid, said mortgages will keep all legal taxes and charges against said premises paid as they become due, and will keep the buildings thereon insured for the benefit of the mortgagee, as their interest may appear, and the policy duly assigned to the mortgagee, to the amount of Two Thousand (\$2000.00) Dollars, and failing to do so, said mortgagee may pay said taxes or insurance, and the amount so paid, with 6 per cent interest, shall be a part of the debt secured by this mortgage.

In Witness Whereof, the said mortgagors have hereunto set their hands and seals this 19th day of February, 1938.

Chancey R. Brown, (Seal)
Mary G. Brown. (Seal)

State of Indiana } ss.
Washington County }

Before me, the undersigned, a Notary Public in and for said County, this 19th day of February, 1938, came Chancey R. Brown and Mary G. Brown, husband and wife, and acknowledged the execution of the foregoing instrument.

55 Witness my hand and Notarial Seal.

(Seal)

Frances Porter,
Notary Public.

Comm. Exp. Dec. 15, 1940.

State of Indiana }
County of Orange } ss.

I, William O. Ritter, Clerk of the Orange Circuit Court, do hereby certify that the above and foregoing is a true and complete copy of the amended complaint filed September 25, 1939, in said court in the cause of the State Bank of Hardinsburg *vs.* Chancey R. Brown, et al. and numbered 10039.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court at Paoli, Indiana, this 3rd day of September, 1940.

(Seal)

William O. Ritter,
Clerk, Orange Circuit Court

56

EXHIBIT "E".

State of Indiana } ss.
Orange County }

Be It Remembered, that on the 14th day of March, 1939, the same being the 18th Judicial Day of the February Term, 1939, of the Orange Circuit Court, before the Honorable Emmet C. Mitchell, Judge of said court, the following proceedings were had in the below captioned cause, to-wit:

State Bank of Hardinsburg, }
v.s. } #10039.
Chancey R. Brown, Mary G. }
Brown.

Comes now the plaintiff by Frank S. Houston, attorney, and files herein complaint to foreclose mortgage, which complaint reads as follows, to-wit: (H. I.) Summons is ordered to issue to the Sheriff of Orange County, Indiana, for the defendants returnable Monday, April 17, 1939.

And Afterwards on the 17th day of April, 1939, the same being the 1st Judicial Day of the April Term of the Orange Circuit Court, the following further proceedings were had in said cause, to-wit:

Come now Tucker & Tucker, attorneys, and appear for the defendants. Said defendants are ruled to answer.

And Afterwards, on September 25, 1939, the same being the 13th Judicial Day of the September Term of the Orange Circuit Court, the following further proceedings were had in said cause, to-wit:

On the motion of the plaintiff, The Orange County Bank and the Central Rubber and Supply Co. are made party defendants. Comes now the plaintiff and files amended complaint, which amended complaint reads as follows, to-wit: (H. I.) Come now Tucker and Tucker, attorneys, and appear for the defendant Orange County Bank. Comes now A. L. Dillard, attorney, and appears for the defendant Central Rubber & Supply Co. Said defendants are ruled to answer.

And Afterwards, on the 7th day of October, 1939, the same being the 24th Judicial Day of the September Term of the Orange Circuit Court, the following further proceedings were had in said cause, to-wit:

Come now the defendants Chancey R. Brown and Mary G. Brown, and the Orange County State Bank and file answer in general denial, which answer reads as follows, to-wit: (H. L.)

And Afterwards on the 20th day of November, 1939, the same being the 1st Judicial Day of the November Term of the Orange Circuit Court, the following further proceedings were had, to-wit:

Come again the parties by their attorneys as heretofore and this cause now coming on for trial the same is submitted to the court for trial without the intervention of a jury. And the court having heard the evidence and being sufficiently advised in the premises finds for the defendant Central Rubber & Supply Co. and that there is due said defendant from the defendant Chancey R. Brown on the judgment set out in the complaint the sum of fifty dollars (\$50.00) from the sale of the Real Estate belonging to Chancey R. Brown without relief from valuation and appraisement laws. Which said debt and claim of the said defendant is a lien against the real estate hereinafter described, owned by Chancey R. Brown, and herein sought to

be foreclosed, superior to the claim and debt of the defendant Orange County Bank and of the claim and debt of the plaintiff hereinafter found and determined.

58 The court further finds for the plaintiff on its complaint herein that there is due the plaintiff from the defendants Chancey R. Brown and Mary G. Brown on the note herein sued on the sum of \$2762.50 and the further sum of \$170.00 as a fee for its attorney, a total of \$2932.50, all without relief from valuation and appraisement laws; that said sums are secured by the mortgage sought to be foreclosed by the complaint; that said mortgage was duly recorded in the office of the recorder of Orange County, Indiana, on the 23rd day of February, 1938 and that said plaintiff is entitled to have said mortgage foreclosed against the defendants Chancey R. Brown and Mary G. Brown. Which said debt and claim of the said plaintiff herein is second and junior to the claim and debt of the defendant Central Rubber & Supply Co. but is superior to the debt and claim of the defendant Orange County Bank. The court further finds for the defendant Orange County Bank as alleged in the complaint herein and that there is due said defendant from the defendant Chancey R. Brown and Mary G. Brown on the judgment set out in said complaint the sum of \$211.55 without relief from valuation and appraisement laws. Which said claim and debt of the said defendant Orange County Bank is second and junior to the debt and claims of both the defendant Central Rubber & Supply Co. and the plaintiff herein.

It is therefore considered and adjudged by the court that the defendant Central Rubber & Supply Co. recover of and from the defendant Chancey R. Brown the sum of \$50.00 together with its costs herein laid out and expended and taxed at _____ dollars, without relief from valuation and appraisement laws, the said judgment to bear interest at the rate of six per cent per annum from the date of

59 the rendition thereof.

It is therefore further considered and adjudged by the court that the defendant Orange County Bank recover of and from the defendant Chancey R. Brown and Mary G. Brown the sum of \$211.55 together with its costs herein laid out and expended and taxed at _____ dollars, without relief from valuation and appraisement laws, the said judgment to bear interest at the rate of six per cent per annum from the 13th day of September, 1938.

It is further considered and adjudged by the court that the plaintiff recover of and from the defendants Chancey R. Brown and Mary G. Brown the sum of \$2932.50, and also its costs and charges in this case laid out and expended, taxed at _____ dollars, without any relief whatever from valuation laws, the judgment to bear interest at the rate of six per cent per annum from the date of the rendition thereof until paid.

And it is further ordered, considered and adjudged by the court that the equity of redemption of the defendants Chancey R. Brown and Mary G. Brown, and all persons claiming by, through or under them in and to said Mortgaged premises, to-wit:

A part of the southwest quarter of section 18 and a part of the northwest quarter of section 19, all in township 2 north, range 2 west, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, township 2 north, range 2 east, and running 99 rods west thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of section 19, township 2 north, range 2 east, thence north 114.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of section 19, in township 2 north and range 2 east, described as follows,

to-wit: Beginning at the northeast corner of said 60 southeast quarter and running thence west 93 $\frac{1}{2}$ rods more or less to a point which is 66 $\frac{1}{2}$ rods of the northwest corner of said quarter section thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less.

be and the same is hereby forever barred and foreclosed, and that said real estate and all of the right, title, interest and claim of said defendants Chancey R. Brown and Mary G. Brown and all persons claiming from, under or through them in and to the same, or so much thereof as may be necessary for said purpose shall be sold by the sheriff of this county as lands are sold on execution; and the proceeds arising from said sale, the sheriff is ordered and directed to apply in the manner following, to-wit: First, the payment of all the costs accrued and the costs of said sale.

Second, to the payment of the amount found due the defendant Central Rubber & Supply Co. from Chancey R. Brown herein being the amount of the judgment herein, before rendered, together with interest from this date.

Third, to the payment of the amount found due the plaintiff herein, being the amount of the judgment heretofore rendered, together with interest from this date.

Fourth, to the payment of the amount found due the defendant Orange County Bank herein, being the amount of the judgment herein before rendered, together with interest from this date, a total of \$226.35.

The overplus if any there be, remaining after the payment of the foregoing judgment, interest and costs to be paid by the sheriff to the Clerk of this Court for the use of the parties lawfully authorized to receive the same; and in the event said mortgaged property shall fail to sell for a sum sufficient to pay and satisfy said judgments, principals, interest and costs, the residue thereof remaining unpaid shall be levied of the goods and chattels, lands and tenements of the defendants Chancey R. Brown and Mary G. Brown, subject to execution, and sale thereof shall be made without relief from valuation and appraisement laws.

It is further ordered by the court, that a duly certified copy of this decree under the hand of the Clerk and the seal of this Court, shall be sufficient authority to the Sheriff to execute the same.

O. K. J. L. Tucker.

State of Indiana, { ss.
County of Orange. { ss.

I, William O. Ritter, Clerk of the Orange Circuit Court, do hereby certify that the above and foregoing is a true and complete copy of the proceedings had in said cause in said court and the same appears of record now on file in my office as such clerk.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said court at Paoli, Indiana, this the 31st day of August, 1940.

(Seal)

William O. Ritter,
Clerk/Orange Circuit Court.

Filed Nov. 20, 1940.

62 And afterwards to-wit at the October Term of said Court on the 20th day of November, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to-wit:

District Court's Special Findings of Fact and Conclusions of Law.

63 IN THE DISTRICT COURT OF THE UNITED STATES
For the Southern District of Indiana,
New Albany Division.

In the Matter of
Chancey Ray Brown and Mary G. } In Bankruptcy
Brown, his wife, } No. 554.
Debtors.

SPECIAL FINDINGS OF FACT.

In the course of the proceedings in this cause, one of the secured creditors, State Bank of Hardinsburg, filed its motion to strike from the schedules as a part of the estate of the debtors, certain real estate. The motion required evidence to be presented to the court, which was done, and, from a consideration of such evidence, the court now states its Special Findings of Fact to be as follows, to-wit:

64

L.

That, on February 19, 1938, Chancey Ray Brown and Mary G. Brown, debtors herein, became indebted to the State Bank of Hardinsburg in the amount of \$2,500.00 evidenced by their promissory note in said amount dated February 19, 1938, and due one year thereafter with interest at six per cent (6%) per annum payable semi-annually, to maturity, and eight per cent (8%) per annum after maturity until paid, and attorney fees, and to secure the payment thereof, debtors executed their mortgage to the State Bank of Hardinsburg, dated February 19, 1938, calling for the payment of \$2,500.00 one year from date, on the following described real estate then owned by them:

A part of the southwest quarter of Section 18 and a part of the northwest quarter of section 19, all in Township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, Township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence east 171.38 rods to the east line of the northwest quarter of Section 19, Township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of Section 19, in Township 2 north, range 2 east, described as follows, to-wit: Beginning at the northeast corner of said southeast quarter and running thence west 93 $\frac{1}{2}$ rods more or less to a point which is 66 $\frac{1}{2}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 37 acres more or less.

65

II.

That no payments have been made on the principal of said note since its execution on February 19, 1938.

66

III.

That, on March 4, 1939, a complaint was filed by the State Bank of Hardinsburg in the Orange Circuit Court of Orange County, Indiana, against the debtors herein in which the plaintiff sought to recover a judgment against the debtors on said note and to foreclose the mortgage given by the debtors on the real estate in question to secure the payment of said note; that said cause was docketed in said Orange Circuit Court as Cause No. 10039.

67

IV.

That, on September 25, 1939, the State Bank of Hardinsburg filed its amended complaint in Cause No. 10039 in said Orange Circuit Court making certain judgment creditors of the debtors herein parties defendant for the purpose only of protecting any interest said judgment creditors might have in the subject-matter of said foreclosure action, but in no way affecting the interest of said debtors.

68

V.

That, on November 20, 1939, judgment was rendered by said Orange Circuit Court in said cause on the note sued on and the claims of other lienholders against the defendants Chancey Ray Brown and Mary G. Brown, his wife, and a decree was entered on said date foreclosing the said mortgage, and said mortgage was ordered foreclosed and said land ordered sold to pay and satisfy said judgment.

69

VI.

That no process issued for the execution of said judgment or decree of sale until after the lapse of one (1) year from the filing of the complaint in that proceeding, but, upon execution being issued on said decree of foreclosure, the Sheriff of Orange County duly sold said real estate on May 25, 1940, to the State Bank of Hardinsburg, and, on June 1, executed and delivered a sheriff's deed to said bank; that the debtors herein had not redeemed said real estate at any time prior to the sale thereof by the Sheriff or at any other time.

70

VII.

That, on May 28, 1940, debtors herein intended, and made a good faith effort to file their petition and schedules under Section 75 of the Bankruptcy Act, but did file, in fact, a regular petition and schedules for adjudication in bankruptcy, and not a petition under Section 75. That, thereafter, the schedules attached to the petition filed on May 28, were withdrawn, and attached to their petition under Section 75 of the Bankruptcy Act, and said latter petition and schedules were actually filed on June 4, and were approved by order of court entered on June 5, and on July 20, were referred to Honorable Robert A. Ralston, Conciliation Commissioner for Orange County, Indiana.

71

VIII.

That, on August 3, 1940, the State Bank of Hardinsburg filed its motion to strike from the schedules of debtors the said real estate as not being the property of the debtors at the time of the filing of the petition in bankruptcy, and, on September 10, said creditor filed its amended motion to strike said real estate from the schedules of debtors as not being property owned by them.

Robert C. Baltzell,
Judge, United States District Court.

November 20, 1940.

CONCLUSIONS OF LAW.

Upon the above and foregoing Special Findings of Fact, the court now states its Conclusions of Law to be as follows, to wit:

I.

That the foreclosure of the mortgage, given by debtors Chancey Ray Brown and Mary G. Brown, husband and wife, to the State Bank of Hardinsburg, and the right of redemption of the real estate therein described are controlled by the Act of the General Assembly of Indiana concerning proceedings in actions to foreclose real estate mortgaged, Chapter 30, page 257 of the Acts of 1931; Burns' Indiana Statutes Annotated 1933, Sections 3-1801 to 3-1821; said mortgage having been executed subsequent to the enactment of said statute.

II.

That the proceedings for the foreclosure of the mortgage given by said debtors in the Orange Circuit Court, the decree entered in said proceedings, and the sale by the Sheriff of Orange County of the real estate ordered sold in such proceeding, were regular and in compliance with the statutes of Indiana governing such proceedings and sale.

III.

That the amended complaint filed in said foreclosure proceeding by the State Bank of Hardinsburg on September 25, 1939, stated the cause of action as it existed when the suit was instituted; that said amended complaint had relation to the time at which the original complaint was filed; and that said amended complaint was a matter occurring in the continuation of the original cause and did not enlarge the time within which the sale of the real estate sought to be foreclosed might be had, and did not enlarge the time within which the debtors had a right to redeem the real estate in question.

IV.

That the right of the debtors herein to redeem said real estate from the judgment of foreclosure expired concurrently with the sale of said real estate by the Sheriff on

May 25, 1940, pursuant to the decree and order of the Orange Circuit Court in said foreclosure proceeding, and that, by their failure to so redeem prior to such sale, they lost all right, title and interest therein from and after the date of such sale which was on May 25, and which was prior to the filing of the petition in bankruptcy by the debtors in this cause. (Section 3-1803, Burns' Indiana Statutes, Annotated, 1933.)

76

V.

That said real estate is now owned by State Bank of Hardinsburg, petitioner herein, and was so owned by it prior to and on the date of the filing of the petition in bankruptcy by the debtors; that, therefore, said debtors had no right, title or interest in such real estate at the time of the filing of their bankruptcy petition, and that said real estate should not have been included in the schedules of property filed by them.

77

VI.

That the motion of the State Bank of Hardinsburg to strike the real estate in question from the schedules of debtors herein should be granted, and this bankruptcy proceeding should be dismissed insofar as it pertains to said real estate.

Robert C. Baltzell,

Judge, United States District Court.

November 20, 1940.

78 (Entry for November 20, 1940, continued.)

79 IN THE DISTRICT COURT OF THE UNITED STATES.

* * * (Caption—554) * * *

Entered
Nov. 20
1940.

ENTRY FOR NOVEMBER 20, 1940.

Come now the parties by their respective attorneys, and this cause coming on to be finally heard by the Court upon the amended motion of the State Bank of Hardinsburg, secured creditor, to strike out parts of the debtors' schedules, and the Court having heard the evidence and argument of counsel, and being sufficiently advised in the premises, now signs and files herein its Special Findings

of Fact and states its Conclusions of Law thereon, which Special Findings of Fact and Conclusions of Law are ordered by the Court filed and made a part of the record in this cause, all of which is now done.

It Is, Therefore, Ordered by the Court that the amended motion of the State Bank of Hardinsburg, Indiana, to strike out parts of the bankrupts' schedules, be and the same is hereby sustained.

It Is Further Ordered by the Court that the following described real estate in Orange County, State of Indiana, to wit:

A part of the southwest quarter of Section 18 and a part of the northwest quarter of section 19, all in Township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of section 18, Township 2 north, range 2 east, and running 99 rods west, thence south 82.77 rods, thence west 74 rods, thence south 26.40 rods, thence 80 east 171.38 rods to the east line of the northwest quarter of Section 19, Township 2 north, range 2 east, thence north 111.18 rods to the place of beginning, containing 88 acres, more or less, with all appurtenances.

Also, a part of the southeast quarter of Section 19, in Township 2 north, range 2 east, described as follows, to wit: Beginning at the northeast corner of said southeast quarter and running thence west 93 $\frac{1}{2}$ rods more or less to a point which is 66 $\frac{1}{2}$ rods east of the northwest corner of said quarter section, thence south 60 rods, thence east to the east line of said section, thence north 60 rods to the place of beginning containing 27 acres more or less,

be, and the same is, hereby stricken from the schedules attached to the debtors' petition herein, and this bankruptcy proceeding is hereby dismissed insofar as it pertains to said real estate, and the Conciliation Commissioner is ordered and directed to make his report without taking action upon and expressly excepting therefrom the above described real estate.

81 And afterwards to wit at the October Term of said ^{Filed Dec. 5, 1940.} Court on the 5th day of December, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Come now the debtors and file petition for appeal, which petition is as follows:

82 UNITED STATES DISTRICT COURT

Southern District of Indiana,

New Albany Division.

In the Matter of
Chancey Ray Brown and Mary G. Brown, No. 554.
In Bankruptcy.
Debtors.

Chancey Ray Brown and Mary G. Brown, Petition to strike
Real Estate.
vs.
State Bank of Hardinsburg, Appellee.
Appellants.

PETITION FOR APPEAL.

To the Hon. Robert C. Baltzell, District Judge:

The above named farmer-debtors, feeling themselves aggrieved, (also in the behalf of unsecured creditors who shall be greatly harmed if present ruling is not reversed) said ruling of the Court having been entered November 20, 1940, denying said debtors' motion to dismiss the petition of the State Bank of Hardinsburg, a secured creditor, filed August _____, 1940, and sustaining said creditor's petition to strike from debtors' schedule of assets certain real estate described as:

A part of the southwest quarter of Section 18 and a part of the northwest quarter of Section 19, all in Township 2 north, range 2 east, and bounded as follows: Beginning at a point 35.68 rods north of the southeast corner of the southwest quarter of Section 18, Township 2 north, Range 2

east, and running 99 rods west; thence south 82.77 rods; thence west 74 rods; thence south 26.40 rods; thence east 171.38 rods to the east line of the northwest quarter of Section 19, Township 2 north, Range 2 east; thence north 111.18 rods to the place of beginning, containing 88 acres, more or less.

Also, a part of the southeast quarter of Section 19, in Township 2 north, Range 2 east, described as follows, to wit: Beginning at the northeast corner of said southeast quarter and running thence west 93 $\frac{1}{2}$ rods, more or less, to a point which is 66 $\frac{1}{2}$ rods east of the northwest corner of said quarter section; thence south 60 rods; thence east to the east line of said section; thence north 60 rods to the place of beginning, containing 37 acres, more or less, with all purtenances,

do hereby appeal from said ruling to the United States Circuit Court of Appeals, Seventh Circuit, Chicago, Illinois, for errors of fact and of conclusions of law to be filed forthwith together with appeal bond, and said farmer-debtors pray that this appeal be allowed.

(Signed) Chancey Ray Brown,

(Signed) Mary G. Brown,

*Farmer-Debtors, Appellants
herein.*

(Signed) C. R. McBride,

*Attorney for Farmer-Debtors,
Appellants.*

Entered
Dec. 5
1940.

83 (Entry for December 5, 1940, continued.)

And said petition is now presented to the Court and is granted, and the appeal is hereby allowed, and the appeal bond to be given by the debtors is hereby fixed at Two Hundred Fifty Dollars (\$250.00), which said bond is to be presented for approval of the Court within fifteen (15) days from and after the date hereof:

87 And afterwards to wit, at the October Term of said Court on the 28th day of December, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Come now the debtors, by their attorney, and files assignment of error, which assignment of error is as follows:

UNITED STATES DISTRICT COURT.

• • (Caption—554) • •

Filed
Dec. 28,
1940.

ASSIGNMENT OF ERROR.

Chancey Ray Brown and Mary G. Brown, farmer-debtors above noted and appellants herein, state that at the hearing of this matter, and the ruling entered therein November 20, 1940, manifest error was committed by the United States District Court for the Southern District of Indiana to the prejudice of these appellants and to the grave injury of their unsecured creditors in this, to wit:

1. Error of fact that competent foreclosure of mortgage proceedings were instituted by appellee March 4, 1939, as recited in Paragraph III, for the reason that all parties in interest were not pleaded and that, if a valid suit to foreclose has at any time been filed by appellee, the true date thereof should be September 25, 1939, from which date the one year period of redemption should be reckoned.
2. Error of law in foreclosing appellants' right to redeem the valuable real estate involved, which is so vital to their welfare and to the interests of their unsecured creditors, as of May 25, 1940, recited in paragraph VI of said order of November 20, 1940, no deed divesting the full title of appellants and vesting title in appellee having issued when appellants invoked the benevolent provisions of the Frazier-Lemke Debtor Moratorium Act of the Congress.

Wherefore, Appellants pray that the order of the District Court, from which appeal is made, shall be reversed, and for all other proper relief.

(Signed) Chancey Ray Brown,
(Signed) Mary G. Brown,

Appellants.

C. R. McBride,
New Albany, Ind.,
Attorneys for Appellants.

We, Chancey Ray Brown and Mary G. Brown, farmer-debtors and appellants herein, swear that the statements made in the foregoing are true to the best of our knowledge and belief.

(Signed) Chancey Ray Brown,
(Signed) Mary G. Brown.

Motion Re Appeal Bond.

89 Subscribed and sworn to by Chancey Ray Brown and Mary G. Brown, farmer-debtors and appellants in the foregoing, before me this 28th day of December, A. D. 1940.

(Signed) Charles R. McBride,
Notary Public.

My Commission Expires May 8, 1942.

Filed
Dec. 20,
1940.

84 And afterwards to wit at the October Term of said Court on the 20th day of December, 1940, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Come now the debtors and file a petition for an extension of ten days for filing bond on appeal, which petition is as follows:

85 IN THE DISTRICT COURT OF THE UNITED STATES
For the Southern District of Indiana,
New Albany Division.

In the Matter of
Chancey Ray Brown and Mary } No. 554.
G. Brown, } In Bankruptcy.
Debtors.

Hon. Robert C. Baltzell, Judge:

The undersigned Farmer-Debtors respectfully file this verified petition, responding to Order for December 5, 1940, wherein a period of fifteen days from the date of said Order was granted petitioners within which period to file, for approval, a cost bond on appeal in the sum of Two Hundred Fifty (\$250.00) Dollars, and meeting with some complications in the execution of such bond for costs, pray the Court to grant an extension of ten days within which period these petitioners can complete their appeal to the United States Circuit Court of Appeals, Chicago, Illinois, by filing bond, recitals of error upon which to base such appeal and Praeclipe of record to be forwarded to Chicago.

Wherefore, the undersigned pray for the extension requested and for all proper relief.

(Signed) Chancey Ray Brown,

(Signed) Mary G. Brown.

Subscribed and sworn to before me this 19th day of December, 1940.

(Signed) Charles R. McBride,
Notary Public.

My Commission Expires May 8, 1942.

Copy to Frank Houston, Atty., Salem, Indiana.

86 - (Entry for December 20, 1940, continued.)

Entered
Dec. 20.
1940.

And said petition being submitted to the Court, and the Court being duly advised in the premises,

It is ordered that said petition be, and the same is, hereby granted, and the time for the debtors to file their appeal bond in the sum of Two Hundred Fifty Dollars (\$250.00), is hereby extended to and including December 30, 1940.

90 And afterwards to wit at the October Term of said Court on the 8th day of January, 1941, before the Honorable Robert C. Baltzell, Judge thereof, the following further proceedings were had herein, to wit:

Come now the debtors, Chancey Ray Brown and Mary G. Brown, by their attorney, and file appeal bond in the sum of \$250.00, which bond is approved by the Court, and is as follows:

Filed 91
Jan. 8, 1941.UNITED STATES DISTRICT COURT
Southern District of Indiana,
New Albany Division.Chancey Ray Brown and Mary G.
Brown, Farmer-Debtors.Chancey Ray Brown and Mary G.
Brown,

Appellants,

vs.
State Bank of Hardinsburg,
Appellee.

No. 554.

In Bankruptcy under
Frazier-Lemke Act.

Know All Men by These Presents, That Chancey Ray Brown and Mary G. Brown, appellants herein, as principals, and cash in the sum of Two Hundred Fifty-two and 50/100 (\$252.50) Dollars, check for \$250.00 and currency for \$2.50, covering one per cent for handling, as surety, are held and firmly bound to the State Bank of Hardinsburg, appellee, in the full sum of \$250.00, to be paid to the said appellee, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seal and dated this 7th day of January, 1941.

Whereas, the above named principals have prosecuted an appeal to the United States Circuit Court of Appeals, Seventh Circuit, to reverse the order of the United States District Court for the Southern District of Indiana, entered November 20, 1940, in said cause:

Now, therefore, if the above named appellants shall diligently prosecute their appeal and shall answer all damages and costs if they fail to make good their plea, then this obligation shall be void; otherwise it shall remain in full force and virtue in law.

(Signed) Chancey Ray Brown, (Seal)
(Signed) Mary G. Brown. (Seal)

Subscribed and sworn to before me this 7th day of January, A. D. 1941.

(Signed) Charles R. McBride,
Notary Public.

My com. ex. May 8, 1942.

92 And afterwards to wit at the October Term of said ¹⁹⁴⁰
Court on the 10th day of January, 1941, before the ¹⁹⁴⁰
Honorable Robert C. Baltzell, Judge thereof, the following
further proceedings were had herein, to wit:

Come now the debtors and file praecipe for record on
appeal, which is as follows:

93 IN THE UNITED STATES DISTRICT COURT.
• • • (Caption—554) • • •

PRAECLPICE FOR RECORD ON APPEAL.

To the Clerk of the United States District Court for the
Southern District of Indiana, New Albany Division:

Please prepare and certify, forthwith, a transcript of the
following records in the above entitled cause on appeal to
the United States Circuit Court of Appeals, Seventh Cir-
cuit:

1. Appellants' schedules "A" and "B", executed May 27, 1940, and filed May 28, 1940.
2. Appellee's motion to strike vital real estate.
3. Appellants' motion to dismiss appellee's motion to strike.
4. Appellee's amended motion to strike.
5. District Court's Special Findings of Fact and Con-
clusions of Law.
6. District Court entry for November 20, 1940, from
which appeal is taken.
7. Appellants' petition for authority to appeal.
8. District Court order for December 15, 1940, author-
izing appeal and fixing amount of appeal bond.
9. Appellants' petition for extension of time within
which to file appeal bond.
10. District Court order of December 20, 1940, granting
further time for filing appeal bond for Court approval.
11. Appellants' assignment of error.
12. Copy of appellants' Appeal Bond.
13. Praecipe for record.

Respectfully submitted,
Charles R. McBride,
Attorney for Appellants.

94 United States of America }
Southern District of Indiana } ss.
New Albany Division . . .

I, Albert C. Sogemeier, Clerk of the United States District Court in and for the Southern District of Indiana, do hereby certify that the above and foregoing is a true and full transcript of the record and proceedings in the matter of Chancey Ray Brown and Mary G. Brown, Debtors, No. 554 Bankruptcy, according to the praecipe filed January 10, 1941, now remaining among the records of said Court in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at New Albany, this 11th day of January, 1941.

(Seal)

Albert C. Sogemeier,
Clerk, U. S. District Court, Southern
District of Indiana.

UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, printed under my supervision and filed on the third day of March, 1941, in the following entitled cause:

Cause No. 7574.

In the Matter of Chancey Ray Brown and Mary G. Brown,
Debtors.

Chancey Ray Brown and Mary G. Brown,
Appellants,
vs.

State Bank of Hardinsburg,
Appellee,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit:

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 22nd day of December, A. D. 1941.

(Seal)

Kenneth J. Carrick,
*Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit held in the City of Chicago and begun on the first day of October in the year of our Lord one thousand nine hundred and forty, and of our Independence the one hundred and sixty-fifth.

In the Matter of

Chancey Ray Brown and Mary
G. Brown,

Debtors.

Chancey Ray Brown and Mary G.
Brown,

Appellants.

7574 *vs.*

State Bank of Hardinsburg,
Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

And, to-wit: On the eleventh day of March, 1941, there was filed in the office of the Clerk of this Court an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7574.

In the Matter of Chancey Ray Brown and Mary G. Brown,
Debtors.

Chancey Ray Brown and Mary G. Brown,

Appellants,

vs.

State Bank of Hardinsburg,

Appellee.

The Clerk will enter our appearance as counsel for appellee.

Telford B. Orbison,
New Albany, Ind.,
Frank S. Hamlin,
Salem, Ind.

Endorsed: Filed Mar. 11, 1941. Kenneth J. Carrick,
Clerk.

Petition to Stay Proceedings.

And afterwards, to-wit: On the twenty-first day of April, 1941, there was filed in the office of the Clerk of this Court a petition to stay proceedings which said petition is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

Seventh Circuit,

1212 Lake Shore Drive, Chicago, Illinois.

In the Matter of the Petition of } No. 554.
Chancey Ray Brown and Mary } Re: Bankruptcy
G. Brown, } under Frazier-
Farmer-Debtors. } Lemke Act.

Chancey Ray Brown and Mary G. } No. 7574.
Brown, } Re: Petition for
Appellants, } Stay.
vs. }
State Bank of Hardinsburg, }
Appellee. }

To the Clerk,

United States Circuit Court of Appeals,
Seventh Circuit, 1212 Lake Shore Drive,
Chicago, Illinois.

Attention Mr. Blanchard desired.

The undersigned attorney for the petitioning Farmer-Debtors under No. 554 and as appellants in Cause No. 7574 above noted respectfully prays the Court for a stay of proceedings in the above cited matters pending re-financing application made by these debtors and hopefully advancing to a conclusion through the Federal Land Bank, Louisville, Ky.

If and when these re-financing efforts shall have become successfully completed the above cited appeal will be withdrawn as, likewise, bankruptcy proceedings under the Frazier-Lemke Moratorium Act.

Should appellants re-financing efforts fail, a brief will quickly be filed with the Court and Cause No. 7574 can proceed to judgment.

A copy of this prayer has this 19th day of April, A. D., 1941, been placed in the mail addressed to Telford B. Orbison, Union National Bank Building, New Albany, Indiana, local counsel for appellee.

C. R. McBride,
Attorney.

Endorsed: Filed April 21, 1941. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the twenty-second day of April, 1941, the following further proceedings were had and entered of record, to-wit:

Tuesday, April 22, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. Otto Kerner, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*,
Debtors.

Chancey Ray Brown, *et al.*,
Appellant,

7574

vs.

State Bank of Hardinsburg,

Appellee.

Appeal from the District Court of the United States for the Southern District of Indiana, New Albany Division.

On petition of counsel for appellants, it is ordered by the Court that proceedings in the above entitled appeal be stayed during the pendency of the application made by the Debtors for refinancing; and it is further ordered that should said refinancing efforts fail, then appellants' brief shall be promptly filed.

And afterwards, to-wit: On the fifth day of July, 1941, there was filed in the office of the Clerk of this Court a motion of the Federal Land Bank of Louisville to be made a party to the appeal, which said motion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7574.

In the Matter of
Chancey Ray Brown and Mary
G. Brown, his wife,
Debtors.

Chancey Ray Brown and Mary G.
Brown,
Appellants,
vs.
State Bank of Hardinsburg,
Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

MOTION OF THE FEDERAL LAND BANK OF LOUISVILLE TO BE MADE A PARTY TO THE APPEAL.

Comes now The Federal Land Bank of Louisville, a corporation organized under and doing business by virtue of that act of Congress known as the Federal Farm Loan Act approved July 17, 1916, with its office and principal place of business in Louisville, Kentucky, having power by virtue of such act to contract, sue and be sued and to lend money to farmers upon the security of first mortgages upon farm-lands, and respectfully shows to the court;

That it is an interested party to this appeal by reason of its holding a first mortgage upon the real estate owned by the estate of the debtor-appellant, upon which real estate the appellee, State Bank of Hardinsburg, holds a second mortgage;

That it has not been made a party to this appeal; and has not been furnished with copies of the transcript or appellant's brief;

That its rights as such mortgagee will be vitally affected

by the outcome of this appeal, and that it is entitled to and should be made a party to the appeal and given an opportunity to protect its interests herein involved.

Wherefore, petitioner, The Federal Land Bank of Louisville, prays:

- (A) That it be made a party to this appeal;
- (B) That it be furnished with copies of the transcript and appellant's brief;
- (C) That it be given leave to file its brief as appellee;
- (D) That it be afforded the opportunity of making oral argument in this cause.

J. F. Williamson,

J. S. Grimes,

Counsel for The Federal Land

Bank of Louisville,

224 East Broadway,

Louisville, Kentucky.

Endorsed: Filed July 5, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the sixteenth day of July, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, July 16, 1941.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*,
Debtors.

Chancey Ray Brown, *et al.*,
Appellants.

7574

115.

State Bank of Hardinsburg.

Appelée.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

It is ordered that the motion of The Federal Land Bank of Louisville to be made a party to this appeal be, and it is hereby, deferred to await the determination of the appeal.

It is further ordered that leave be, and it is hereby, granted to said The Federal Land Bank of Louisville to file its brief herein, copies of which it shall have served upon counsel for appellants and for appellee.

It is further ordered that the Clerk of this Court shall send to said The Federal Land Bank of Louisville copies of the printed transcript of record and the briefs filed in this cause.

And afterwards, to-wit: On the seventeenth day of July, 1941, there was filed in the office of the Clerk of this Court the consent of appellant to motion of Federal Land Bank of Louisville, which said consent is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7574.

In the Matter of
Chancey Ray Brown and Mary
G. Brown,
Debtors.
Chancey Ray Brown and Mary G.
Brown,
Appellants,
vs.
State Bank of Hardinsburg,
Appellee.

In Bankruptcy: No. 554
under the Frazier-Lemke
Moratorium Act.
Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

67 Alpine Street, Dubuque, Iowa, July 16, 1941.

To the Judges and Officers of the
United States Circuit Court of
Appeals, Seventh Circuit,
1212 Lake Shore Drive,
Chicago, Illinois.

Gentlemen:

This may be an idle and superfluous gesture, but as attorney for the Farmer-Debtors and Appellants in the above cited cause the undersigned desires to make formal acknowledgment of receipt of a copy of the motion to intervene as a party in interest filed by the Federal Land Bank of Louisville, Kentucky, dated July 3, 1941, cheerfully assenting to the prayer of the Bank to intervene, asking that the attorneys for the Bank be granted full privileges to file briefs and to appear for oral argument, if desired, and that they be furnished copies of briefs filed by appellant and by appellee.

The writer advises that he is mailing, postage prepaid, copies hereof to appellants, to Tilford B. Orbison, attorney for appellee, and to The Federal Land Bank of Louisville, Kentucky, in the same mail with this.

Yours truly,

C. R. McBride,
Attorney for Appellants.

Endorsed: Filed July 17, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the first day of October, 1941, there was filed in the office of the Clerk of this Court a motion of counsel for appellants for leave to withdraw appearance, which said motion is in the words and figures following, to-wit:

Dubuque, Iowa, September 6, 1941.

Cause No. 7574.

Chancey Ray Brown, *et al.*,
Debtors and Appellants,
vs.
 State Bank of Hardinsburg,
Appellee.

In Bankruptcy:
 Frazier-Lemke
 Farmer-Debtor
 Moratorium Act.

Office of the Clerk,
 United States Circuit Court of Appeals,
 Seventh Circuit, 1212 Lake Shore Drive,
 Chicago, Illinois.

Sir:

The undersigned acknowledges receipt of entry dated September 3, 1941, fixing Wednesday, October 15, 1941, as the date, and the Court Room, as above indicated as the place, set for hearing of Cause No. 7574, above cited.

With permission of the Court, and because of age, eighty-fifth year of life's pilgrimage, failing health, arthritis and hardening of the arteries, the undersigned hereby withdraws from this proceeding, thereby permitting his clients, Debtors and Appellants, if desired, to become represented by a younger, more active and abler proctor.

He expresses the hope that the attorney for the Federal Land Bank, if in attendance at the proposed hearing, shall present the facts so convincingly, disclosing the worthiness of these Farmer-Debtor Appellants, as to win a reversal of the ruling of the District Court from which the appeal was taken.

Copies of this prayer, first-class postage prepaid, have this date been mailed to appellants, to attorney for appellee, and to Federal Land Bank, Louisville.

Yours truly,

Charles R. McBride,
Attorney.

Endorsed: Filed Oct. 1, 1941. Kenneth J. Carrick,
 Clerk.

And on the same day, to-wit: On the first day of October, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 1, 1941.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparke, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*,
Debtors.

Chancey Ray Brown, *et al.*,
Appellants,
7574 *vs.*
State Bank of Hardinsburg,
Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

Upon the filing by Charles R. McBride of a withdrawal of appearance as counsel for Chancey Ray Brown and Mary G. Brown, appellants herein, it is ordered that said withdrawal of appearance be, and it is hereby, approved.

It is further ordered that leave be, and it is hereby, granted to Samuel E. Cook to enter his appearance herein as counsel for said appellants.

And afterwards, to-wit: On the third day of October, 1941, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellants, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7574.

In re Chancey Ray Brown, *et al.*, Debtors.Chancey Ray Brown, *et al.*,

vs.

State Bank of Hardinsburg

The Clerk will enter my appearance as counsel for Appellant.

Samuel E. Cook,
Huntington, Ind.Endorsed: Filed Oct. 3, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the sixth day of October, 1941, there was filed in the office of the Clerk of this Court, a petition of Federal Land Bank of Louisville to be made a party appellee, which said petition is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7574.

In the Matter of
Chancey Ray Brown and Mary
G. Brown, Debtors.
Chancey Ray Brown and Mary G.
Brown, Appellants,
vs.
State Bank of Hardinsburg, Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

Honorable
Robert C. Baltzell,
Judge.

PETITION.

Comes now The Federal Land Bank of Louisville, and respectfully represents to the Court:

That it has heretofore petitioned leave of the Court to appear and to be made a party-appellee and to file brief in support of its position in this cause;

That the Court has granted the petitioner leave to file brief, but has withheld making The Federal Land Bank of Louisville a party-appellee until hearing of this cause;

That The Federal Land Bank of Louisville finds itself in accord with the theory expressed in the brief of the appellee State Bank of Hardinsburg heretofore filed in this cause and desires leave of this Court to be allowed to adopt the brief of said State Bank of Hardinsburg as the brief of this petitioner;

The Federal Land Bank of Louisville further represents to the Court that since the date of the filing of the brief of the appellants, Chancey Ray Brown and Mary G.

Brown, and the brief of the appellee State Bank of Hardinsburg, C. R. McBride has withdraw as counsel for appellants Chancey Ray Brown and Mary G. Brown, and Samuel E. Cook of Huntington, Indiana has been given leave of this Court to enter appearance as counsel for said appellants;

That this petitioner is informed that said counsel, Samuel E. Cook, desires to present to this Court on oral argument, and possibly by supplemental brief, a theory in this cause different from that expressed in the brief filed by the appellants herein, and that this petitioner desires an opportunity to answer orally, and, if necessary, by brief the new position to be taken by the appellants.

Wherefore, your petitioner, The Federal Land Bank of Louisville, prays:

1. As heretofore prayed, that The Federal Land Bank of Louisville be made a party-appellee in this cause and be allowed to appear and set up its rights herein;

2. That it be given leave to adopt the brief of the appellee State Bank of Hardinsburg, and that such brief be considered as the brief of The Federal Land Bank of Louisville;

3. That The Federal Land Bank of Louisville be given opportunity to appear at the oral argument of this cause set for October 15, 1941 and to reply to the argument of the appellants;

4. That if the appellants deem it advisable to file supplemental brief in this cause, that The Federal Land Bank of Louisville be given leave to file a reply brief thereto;

And for such other relief as the Court deems fitting and proper under the circumstances.

William C. Goodwyn,
J. F. Williamson,
John S. Grimes,

*Attorneys, The Federal Land Bank
of Louisville,*

224 East Broadway,
Louisville, Kentucky.

State of Kentucky } ss.
County of Jefferson }

R. W. McLemore, Jr., being duly sworn on oath, says that he is Vice President of The Federal Land Bank of Louisville, that he has read the foregoing petition, and that the statements contained therein are true as he verily believes.

R. W. McLemore, Jr.,
*Vice President, The Federal Land
Bank of Louisville.*

Subscribed and sworn to before me this 4th day of October, 1941.

(Seal) **Caroline A. Williamson,**
Notary Public, Jefferson County, Ky.

My commission expires June 17, 1945.

Endorsed: Filed Oct. 6, 1941. Kenneth J. Carrick,
Clerk.

And afterwards, to-wit: On the seventh day of October, 1941, the following further proceedings were had and entered of record, to-wit:

Tuesday, October 7, 1941.

Court met pursuant to adjournment.

Before:

Hon. Otto Kerner, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*
Debtors.

Chancey Ray Brown, *et al.*
Appellants.

7574 *vs.*

State Bank of Harlanburg,
Appellee.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

On petition of counsel for The Federal Land Bank of Louisville, it is ordered (1) that said The Federal Land Bank of Louisville be made a party-appellee in this cause and be allowed to appear and set up its rights herein; (2)

that it be given leave to adopt the brief of the appellee State Bank of Hardinsburg, and that such brief be considered as its brief; (3) that it be given opportunity to appear at the oral argument of this cause and to reply to the argument of the appellants; and (4) if the appellants deem it advisable to file supplemental brief in this cause, that it be given leave to file a reply brief thereto.

And afterwards, to-wit: On the eleventh day of October, 1941, there was filed in the office of the Clerk of this Court, an appearance of counsel for The Federal Land Bank of Louisville, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Cause No. 7574.

In the Matter of Chancey Ray Brown, *et al.*, Debtors.

Chancey Ray Brown, *et al.*,

Appellants,

vs.

State Bank of Hardinsburg and The Federal Land Bank
of Louisville,

Appellees.

The Clerk will enter our appearance as counsel for The Federal Land Bank of Louisville.

J. F. Williamson,

224 East Broadway, Louisville, Kentucky.

John S. Grimes (G. J. F. Williamson),

224 East Broadway, Louisville, Kentucky.

Endorsed: Filed Oct. 11, 1941. Kenneth J. Carrick.
Clerk.

And afterwards, to-wit: On the fifteenth day of October, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, October 15, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.

In the Matter of
Chancey Ray Brown, *et al.*,
Debtors.
Chancey Ray Brown, *et al.*,
Appellants,
7574 vs.
State Bank of Hardinsburg, *et al.*,
Appellees.

Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Samuel E. Cook, counsel for appellants, and by Mr. Telford B. Orbison, counsel for appellee State Bank of Hardinsburg, Mr. John S. Grimes, counsel for appellee The Federal Land Bank of Louisville, being present but not participating in the oral argument for appellees, and the Court takes this matter under advisement.

It is ordered that leave be, and it is hereby, granted to counsel for appellants to file herein four typewritten copies of a short brief for appellants.

And afterwards, to-wit: On the eighth day of November, 1941, there was filed in the office of the Clerk of this Court, the opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 7574.

October Term and Session, 1941.

In the Matter of

**CHANCEY RAY BROWN and
MARY G. BROWN,** *Debtors.*

**CHANCEY RAY BROWN and
MARY G. BROWN,** *Appellants.*

STATE BANK OF HARDINSBURG, *Appellee.*

Appeal from the District Court of the United States for the Southern District of Indiana, New Albany Division.

November 8, 1941.

Before EVANS, MAJOR, AND MINTON, *Circuit Judges.*

MINTON, Circuit Judge: On March 4, 1939, the appellee filed in the Circuit Court of Orange County, Indiana, a complaint to foreclose a mortgage given by the appellants to the appellee, on a certain tract of land in Orange County, Indiana, consisting of one hundred and twenty-five acres.

On September 25, 1939, appellee filed its amended complaint, making certain judgment creditors of the appellants parties. On November 20, 1939, the court entered a judgment of foreclosure, and authorized the sale of said land. After the expiration of a year from the date of filing the complaint for foreclosure, the sheriff of Orange County sold the real estate to the appellee on May 25, 1940, and on June 1, 1940, delivered a deed therefor to the appellee.

On May 28, 1940, an entry was made in the Clerk's

Docket in the District Court for the Southern District of Indiana, which recited that the appellants filed their voluntary petition in bankruptcy under Sec. 75, but the record shows, and the District Court found, that they actually filed a regular petition and schedules, although they in good faith intended to file a proceeding under Sec. 75. The appellants realized they had made a mistake and had not filed a petition under Sec. 75, and the record shows that on the same date they withdrew the petition that day filed. The record then recites:

"Comes now the debtors *** and withdraw their petition filed on May 28, 1940 on account of it being wrongfully filed."

On June 4, 1940, the record shows, a proper petition and schedules were filed under Sec. 75.

We think this withdrawal did not amount to a dismissal. Obviously, the papers were withdrawn from the file for the purpose of correction. This view is supported by the fact that the filing on June 4, 1940, carried the same number on the District Court Docket as was assigned to the case when filed May 28, 1940.

We therefore hold that the second filing was an amendment to the first proceeding, and relates back to the original filing, and therefore there was on May 28, 1940, a proceeding pending under Sec. 75. *United States ex rel. Texas Portland Cement Co. v. McCord*, 233 U. S. 157, 34 S. Ct. 550, 58 L. Ed. 893; *Interstate Refineries, Inc. v. Barry*, 7 F. 2d. 548, 550; *General Orders in Bankruptcy*, 37, *Federal Rules Civil Procedure* 15 (C), 28 U. S. C. A. 723(c), *et seq.*

When the appellants filed their amended petition on June 4, 1940, they scheduled as one of their assets the one hundred and twenty-five acres of land which the sheriff had sold to appellee on May 25, 1940. The appellants moved to strike this land from the bankruptcy schedule and the court sustained the motion, and ordered the land stricken from the schedule. From that order, the appellants prosecute this appeal.

It is the contention of the appellants that since the deed was not delivered until after their petition under Sec. 75 was filed, the property came into the jurisdiction of the bankruptcy court and was properly scheduled. The appellee says the equity of redemption was cut off by the sale on May 25, and therefore there was no property or any

equity or right in such property left in the appellants, for the bankruptcy court to assume jurisdiction of.

Burns Indiana Statutes (1933) Sec. 3-1801, provides:

"In any proceeding for the foreclosure of any mortgage hereafter executed on real estate, no process shall issue for the execution of any such judgment or decree of sale for a period of one (1) year after the filing of a complaint in any such proceeding ••••"

There is no question but what the year had expired before the sale was held, and the regularity of the sale is not questioned. Did the sale cut off the equity of redemption?

Burns Indiana Statutes (1933) Sec. 3-1803, provides:

"At any time prior to the sale, any owner or part owner of the real estate may redeem the same from the judgment by payment to the clerk, prior to the issuance to the sheriff of the judgment and decree or to the sheriff thereafter, of the amount of the judgment, interest and costs, for the payment or satisfaction of which the sale was ordered, in which event no process for the sale of the real estate under such judgment shall be issued or executed but the officer so receiving payment shall satisfy such judgment and the order of sale shall be vacated ••••"

The Indiana courts have not construed this provision of the statute. Counsel on both sides agreed the statute had not been construed by the Indiana courts, and we are unable to find any case construing this section. We decline to anticipate by our decision what the construction of this statute by the Indiana courts may be. Without deciding, we will assume for the sake of the argument that the equity of redemption is cut off by the sale. Under the practice in Indiana, as we understand it, neither the sale needs to be confirmed, nor the deed of the sheriff approved by the court.

The question therefore narrows down to this: admitting that the equity of redemption was cut off by the sale, did that prevent the bankruptcy court from obtaining jurisdiction of the property where the petition under Sec. 75 was pending before the deed was delivered?

Paragraph (N) of Sec. 75, 11 U. S. C. A. Sec. 203(n), reads in part as follows:

"The filing of a petition or answer with the clerk of

court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

If the statute had stopped with the words "including all real or personal property, or any equity or right in any such property," there would be much force in the argument of appellee that the mortgagor had no equity or right in the property after the equity of redemption was cut off by a regular and legal sale. Then there would be nothing left but the bare legal title. If the sale were invalid, of course there was no sale and the equity would not be cut off.

The jurisdiction of the bankruptcy court under Sec. 75 does not depend upon the equity of redemption remaining. That is only one of the interests, rights or equities remaining in the mortgagor, which enables him to bring his property into the jurisdiction of the bankruptcy court. This statute has enumerated a number of other things which, if *undone*, entitles the mortgagor to bring the property in question into the jurisdiction of the bankruptcy court, and one of them is "where a deed has not been delivered." The non-delivery of the deed is in no way related to the equity of redemption, or required as a part of the process to cut off the equity of redemption. It is simply a fact which, if it exists at the time the petition in bankruptcy is filed under Sec. 75, is of itself sufficient to cast upon the bankruptcy court jurisdiction of the property.

This is further borne out by the provisions of Paragraph 75(N), which says:

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had

not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

This clearly provides if at the time of filing the petition the deed had not been delivered, the period of redemption shall be extended. The lack of delivery of the deed is not coupled with the period of redemption, but is separated by the conjunction "or." The bankruptcy statute, in the case where deed has not been delivered and the petition is filed before deed is delivered, not only casts exclusive jurisdiction upon the bankruptcy court, but authorizes extension of the period of redemption "for the purpose of carrying out the provisions of this section."

Since the mortgage in this case was given after the Bankruptcy Act was passed, we think there can be no question of the right of Congress to pass such legislation under its powers to enact bankruptcy legislation. *Wright v. Vinton Branch*, 300 U. S. 440, 470, 57 S. Ct. 556, 81 L. Ed. 736, 112 A. L. R. 1455; *Kalb v. Feuerstein*, 308 U. S. 433, 60 S. Ct. 343, 84 L. Ed. 370.

We therefore hold that since the deed had not been delivered at the time, to wit, May 28, 1940, the petition under Sec. 75 was filed; that the filing of the petition cast upon the bankruptcy court exclusive jurisdiction, and although the equity of redemption may have been cut off by the sale, the bankruptcy statute authorized the avoidance of that fact and an extension of the period of redemption for the purpose of carrying out the salutary provisions of the Bankruptcy Act.

The judgment is

REVERSED.

MAJOR, Dissenting.

I do not agree with the construction placed upon the section of the Bankruptcy Act in controversy. In my opinion the debtors, at the time of filing their petition, either had an interest in the property and therefore entitled to the benefits of the Act, or had no interest and not entitled to such benefits. I think the court should take one horn or the other of the dilemma. Apparently the majority takes both.

The opinion assumes that the debtors' equity of redemption terminated with the Sheriff's sale. Why assume? There is no ambiguity in the Statute. By its plain terms, the equity of redemption was terminated. In addition to the provisions of the Indiana Statute quoted in the opinion, Sec. 3-1808 provides as follows:

"Mortgages executed after June, 1931—Redemption.—There shall be no redemption from foreclosures of mortgages hereafter executed on real estate except as provided for under this act."

Upon the expiration of the period of redemption, every right, claim and interest which the debtors had in the property was extinguished. After the sale the debtors would have had no right to redeem even had they possessed the ability to do so. They could have conveyed nothing by deed or otherwise. As was said in *Glenn v. Hollums*, 80 F. (2d) 555, 557:

• • • • Nothing remains to be done to complete the superior title which passed by the sheriff's sales, except the purely ministerial act of delivering the sheriff's deed, • • • •

Delivery of the deed was not necessary to vest complete ownership in the purchaser. *Schreiner, et al v. Farmers' Trust Co. of Lancaster*, 91 F. (2d) 606, 607; 19 R. C. L. Sec. 442. It was only evidence of the title acquired by such purchaser. At most, the debtors retained nothing other than legal title, in trust for the purchaser. 42 C. J. Sec. 1891. There is no occasion to labor this point further in view of the reasoning of the majority.

It is difficult for me to comprehend the reasoning employed in the construction placed upon Section 75 (n). Perhaps that is the reason I am unable to agree. The phrase "or where deed has not been delivered" is held to "authorize extension of the period of redemption." This, in my opinion, is a fallacious interpretation, inconsistent with the purport of the paragraph when read in its entirety. It is provided that the filing of a petition "• • • shall immediately subject the farmer and all his property, • • • to the exclusive jurisdiction of the court, • • • or any equity or right in any such property, • • •" I think it is readily apparent that all the enumerated circumstances which follow are dependent upon the premise that the debtor, upon filing his petition, be possessed of an "equity or right" in the property. If no such right or

equity exists, none of the contingencies, including the one here relied upon, can be effective. For instance, among the contingencies enumerated are—"• • • contracts for purchase, contracts for deed, or conditional sales contracts, • • •" Under the majority construction it would follow that a debtor who, at the time of the filing of his petition, possessed one of these instruments, would bring into the jurisdiction of the Bankruptcy Court, any land described therein, and this irrespective of the fact that any equity or interest in such land had long before expired. In the same category is the phrase "where deed had not been delivered." There may be situations where the debtor has an "equity or right" until the delivery of a deed. There must be other cases—in fact, this is one—where the extinguishment of his "equity or right" was not dependent upon such delivery.

The construction placed upon the paragraph by the majority would, in my judgment, render it unconstitutional. Neither the Wright nor Kalb case, cited by the majority, sustains such construction. In both those cases, the court was dealing with a property right which the debtor had at the time of the filing of his petition. It seems pertinent to quote what the court in the Kalb case (308 U. S. 433) on page 442, said:

"As stated by the Senate Judiciary Committee in reporting these amendments: "• • • subsection (n) brings all of the bankrupt's property, wherever located, under the absolute jurisdiction of the bankruptcy court, where it ought to be. Any farmer who takes advantage of this act ought to be willing to surrender all his property to the jurisdiction of the court, for the purpose of paying his debts, and for the sake of uniformity. • • •"

In *Wright v. Union Central Ins. Co.*, 304 U. S. 502, the court, in discussing the power of Congress to extend the period of redemption, as fixed by State law, on page 514, said:

"• • • The debtor has a right of redemption of which the purchaser is advised, and until that right of redemption expires the rights of the purchaser are subject to the power of the Congress over the relationship of debtor and creditor and its power to legislate for the rehabilitation of the debtor. • • •"

Further, on page 518, the court said:

"• • • But if Congress is acting within its bank-

ruptcy power, it may authorize the bankruptcy court to affect these property rights, provided the limitations of the due process clause are observed."

In *Union Land Bank v. Byerly*, 310 U. S. 1, the court considered whether the debtor had an interest in the land so as to bring it within the jurisdiction of the Bankruptcy Court, and in deciding adversely to the debtor, on page 10, said:

• • • Since the foreclosure proceedings had been completed and title had passed thereunder prior to the filing of the debtor's petition for reinstatement, it would have been a vain thing to refer the cause to a conciliation commissioner for administration of property which no longer belonged to the debtor. • • •

A reading of the cases leaves no doubt of the broad power possessed by Congress in the matter of bankruptcy legislation. The cases are just as convincing, however, that such power is limited to situations where the debtor has some right or interest in the property. Congress can, by legislation, protect, preserve and extend existing rights and interests, but it can not create property rights, nor can it revive an interest or right which has ceased to exist prior to the time a debtor comes into the bankruptcy court. It can administer to the patient as long as a spark of life remains, but when that spark is extinguished, its power no longer exists.

The construction which I place upon the paragraph would give every debtor the benefit of the Act so long as he owned any "equity or right" in the property. I would go no further. I think the action of the District Court was correct and that its order should be affirmed.

Endorsed: Filed Nov. 8, 1941. Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the eighth day of November, 1941, the following further proceedings were had and entered of record, to-wit:

Saturday, November 8, 1941.

Court met pursuant to adjournment:

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.
Hon. Sherman Minton, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*,
Debtors.

Chancey Ray Brown, *et al.*,
Appellants.

7574 *vs.* State Bank of Hardinsburg, *et al.*,
Appellees.

Appeal from the District Court of the United States for the Southern District of Indiana, New Albany Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Indiana, New Albany Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby reversed, with costs, and that this cause be, and it is hereby, remanded to the said District Court.

And afterwards, to-wit: On the third day of December, 1941, there was filed in the office of the Clerk of this Court, a petition for stay of mandate, which said petition is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

In the Matter of
Chancey Ray Brown and Mary
G. Brown,
Debtors.

Chancey Ray Brown and Mary G. Brown, No. 7574.
Appellants,
vs.
State Bank of Hardinsburg,
Appellee.

PETITION OF APPELLEE FOR STAY OF
MANDATE.

Comes now the appellee, State Bank of Hardinsburg, by its attorney, Telford B. Orbison, and moves the Court for stay of mandate, and in support thereof says:

That appellee has determined to file a petition for certiorari with the Clerk of the Supreme Court of the United States relative to the judgment of this Honorable Court handed down on the 8th day of November, 1941; that appellee's attorney has directed the Clerk of this Court to prepare the record of the proceedings in this Court, for the purpose of enabling appellee to file said record with the Clerk of the Supreme Court of the United States, as required by the rules of that Court; that in the opinion of said attorney said certiorari petition, said record and the brief in support of said petition will be placed on file with said Clerk of said Supreme Court within thirty days from date.

Wherefore, appellee prays for stay of mandate for a period of thirty days from date.

State Bank of Hardinsburg,
Appellee.
By Telford B. Orbison,
Its Attorney.

Order Staying Mandate:

State of Indiana { ss.
County of Floyd }

Telford B. Orbison, being first duly sworn upon his oath deposes and says:

That he is the attorney for the State Bank of Hardinsburg, the appellee in the above entitled cause, and that the allegations stated in the foregoing petition are true.

Telford B. Orbison,

Subscribed and sworn to before me this 2nd day of December, 1941.

(Seal)

Mildred Hostettler,
Notary Public, Clark County,
Indiana.

My commission expires July 11, 1943.

Endorsed: Filed Dec. 3, 1941. Kenneth J. Carrick,
Clerk.

And on the same day, to-wit: On the third day of December, 1941, the following further proceedings were had and entered of record, to-wit:

Wednesday, December 3, 1941.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

In the Matter of

Chancey Ray Brown, *et al.*,
Debtors.

7574 vs.
Chancey Ray Brown, *et al.*,
Appellants,
State Bank of Hardinsburg, *et al.*,
Appellees.

Appeal from the District Court of the United States for the Southern District of Indiana, New Albany Division.

On motion of counsel for appellee State Bank of Hardinsburg, it is ordered that the mandate of this Court in this cause be, and it is hereby, stayed pursuant to Rule 25 of the rules of this Court.

UNITED STATES CIRCUIT COURT OF APPEALS
For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the proceedings had and papers filed (except briefs of counsel, and order relative to briefs) in the following entitled cause:

Cause No. 7574

In the Matter of

Chancey Ray Brown and Mary G. Brown,

Debtors.

Chancey Ray Brown and Mary G. Brown,
Appellants,

vs.

State Bank of Hardinsburg, *et al.*,
Appellees,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 22nd day of December, A. D. 1941.

Kenneth J. Carrick,

(Seal)

Clerk of the United States Circuit Court
of Appeals for the Seventh Circuit.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 30, 1942

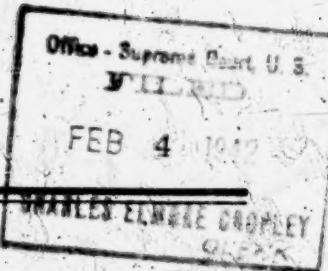
The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(1334)



FILE COPY



IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. ~~920~~ 23

IN THE MATTER OF

CHANCEY RAY BROWN AND MARY G. BROWN,

DEBTORS.

STATE BANK OF HARDINSBURG,

Petitioner,

vs.

CHANCEY RAY BROWN AND MARY G. BROWN,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE SEVENTH
CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No. _____

IN THE MATTER OF
CHANCEY RAY BROWN AND MARY G. BROWN,
Debtors.

STATE BANK OF HARDINSBURG,
Petitioner,
vs.

CHANCEY RAY BROWN AND MARY G. BROWN,
Respondents.

**PETITION FOR WRIT OF CERTIORARI TO THE
CIRCUIT COURT OF APPEALS FOR THE
SEVENTH CIRCUIT.**

*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Your petitioner, State Bank of Hardinsburg, a banking corporation organized under the laws of the State of Indiana, prays this Court for the issuance of a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit to review a final judgment of that Court reversing a decree of the United States District Court for the Southern District of Indiana, New Albany Division, and in support thereof respectfully shows:

A.

Summary Statement of Matter Involved.

On May 28, 1940, respondents, as farmer-debtors, filed in the District Court their petition for relief under Section 75 of the Bankruptcy Act of 1898, as amended. (R. 1 and 8.) The schedules which accompanied the petition listed, among other assets, 125 acres of farm land in Orange County, Indiana (R. 17), upon which the petitioner originally had held a \$2,500.00 mortgage under date of February 19, 1938. (R. 55.)

Prior to the time respondents filed their petition and schedules the petitioner filed a complaint on March 4, 1939, in the Orange Circuit Court of Indiana to foreclose its mortgage, obtained a judgment of foreclosure on November 20, 1939, and purchased the property at the sheriff's sale on May 25, 1940. The sheriff's deed, however, was not delivered to petitioner as purchaser until June 1, 1940, which was three days after the petition and schedules were filed. (R. 56 and 57.)

On August 3, 1940, petitioner filed its motion to strike the property from the schedules, on the ground that under the Indiana statutes pertaining to mortgage foreclosures the period of redemption expired with the sheriff's sale.

Section 3-1801, Burns Indiana Statutes, Annotated, 1933, provides that in any proceeding for the foreclosure of any mortgage, no process shall issue for the execution of any judgment or decree of sale for a period of one year after filing of a complaint in any such proceeding. Section 3-1803 provides that the owner of the real estate may redeem the same at any time prior to the sale by the sheriff. Section 3-1806 provides that immediately after such sale the sheriff shall execute and deliver to the purchaser a deed of conveyance for the premises. Section 3-1808 provides that there shall be no redemption from foreclosures of mortgages except as above provided.

and that as a consequence the respondents had no right or interest in such property at the time they file their petition on May 28, 1940, for relief under Section 75. (R. 37-55.)

The District Court sustained petitioner's motion to strike, made special findings of fact and conclusions of law, and on November 20, 1940, entered judgment accordingly. (R. 55-61.) The Circuit Court of Appeals for the Seventh Circuit, by a divided court, reversed on November 8, 1941, holding that although under the Indiana law the right of redemption was cut off by the sheriff's sale,² nevertheless the bankruptcy court did acquire jurisdiction under sub-

² The mortgage involved is controlled by Sections 3-1801 to 3-1809, Burns Indiana Statutes, Annotated, 1933, (Appendix, pp. 23-27), in view of the fact it was executed subsequent to 1931, when these Sections became effective. Consequently, Section 2-3909, Burns Indiana Statutes, Annotated, 1933, which was applicable to mortgages executed prior to 1931, and which was construed in *Hubble v. Berry*, 180 Ind. 513, 103 N. E. 328, 330, is not involved in this case. The only difference, however, between the old law and the new law is that under the former the sheriff, upon a sale under a decree of mortgage foreclosure, is authorized to issue to the purchaser a certificate of purchase which "shall entitle the purchaser *** or assigns, to a conveyance of the estate and said real property bought by said purchaser at the expiration of one (1) year from the date of his purchase unless the same shall have been previously redeemed as hereinafter provided," whereas under the latter, under Sections 3-1801 and 3-1803, the sheriff's sale cannot be held until at least one year after the complaint is filed and the mortgagor may redeem at any time prior to the sheriff's sale. In other words, under the former the period of redemption expires one year from the sheriff's sale, whereas under the latter it expires with the sheriff's sale. The principles of law, however, laid down in *Hubble v. Berry*, are applicable to the instant case, as are those laid down in *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. ed. 1490, 58 S. Ct. 1025, which not only discusses the effect of the Indiana law relating to the right of redemption, but also quotes with approval the opinion of *Hubble v. Berry*.

section (n) of Section 75³ because the sheriff's deed had not been delivered at the time of the filing of the petition. The majority opinion written by Judge Minton is printed (R. 86) but not reported.

Judge Major wrote the dissenting opinion (R. 90), holding that inasmuch as the right of redemption had been cut off by the sheriff's sale the bankruptcy court could not acquire jurisdiction over the property under subsection (n) of Section 75, because respondents had no right of equity in the property at the time their petition was filed, and that to hold otherwise would render the subsection unconstitutional. Both opinions are set forth in the Appendix at pages 30-37.

³ Section 75 (n) of the Bankruptcy Act of 1898, as amended, reads as follows:

"The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended (this section), shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section. (49 Stat. 942, c. 792; 11 U. S. C. A. Sec. 203.)"

B.

Jurisdictional Statement.

(a) The statutory provisions which sustain the jurisdiction of the Supreme Court are as follows:

1. Section 75 (n) of the Bankruptcy Act provides that in proceedings under the Section, except as otherwise provided, "the jurisdiction and powers of the courts, the title, powers, and duties of its officers, the duties of the farmer, and the rights and liabilities of creditors, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered." (49 Stat. 942, chap. 792; 11 U. S. C. A., Sec. 203.)

2. Section 24 (e) of the Bankruptcy Act vests this Court "with jurisdiction to review judgments, decrees and orders of the Circuit Court of Appeals of the United States" in proceedings under the Act in accordance "with the provisions of the laws of the United States now in force or such as hereafter be enacted." (Act of 1898, as amended by Act of May 27, 1926, and Act of June 22, 1938, c. 575, Sec. 1, 52 Stat. 854; 11 U. S. C. A., Sec. 47.)

The provisions of Section 24 are applicable to proceedings under Section 75. *Raentsch v. American Co.*, (9th C. C. A.) 82 Fed. (2d) 770.

3. Section 240 of the Judicial Code, as amended, provides for certiorari from this Court to any Circuit Court of Appeals in any case, civil or criminal. (Act of June 7, 1934, c. 426, 48 Stat. 926; 28 U. S. C. A., Sec. 347.)

(b) Section 75 (n), the validity of which is challenged by petitioner, if it be construed as contended by the Court of Appeals for the Seventh Circuit, reads as follows:

"The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner

for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended (this section), shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

(49 Stat. 942, c. 792; 11 U. S. C. A., Sec. 203.)

(c) The United States Circuit Court of Appeals for the Seventh Circuit, with the court divided, handed down its written opinion and rendered judgment on November 8, 1941. (R. 86-93.)

C.

The Questions Presented.

(a) Do the provisions of Section 75 (n) of the Bankruptcy Act give a court of bankruptcy jurisdiction over real property in which the farmer-debtor, under the law of the state in which such property is located, has no right or equity or interest of any nature at the time he files his petition for relief?

(b) Did Congress have the power under Article I, Section 8, Clause 4, of the Constitution of the United States, to enact Section 75 (n) if it be construed as giving a court of bankruptcy jurisdiction over real property in which the debtor has no right or equity under the applicable state law, but where all rights and equities in and to the property, under such state law, are vested in a third person at the time the debtor files his petition for relief under Section 75?

(c) If Section 75 (n) be thus construed and in pursuance thereof a court of bankruptcy assumes jurisdiction over the property, would the rights of the third person be violated because his property was being taken in contravention to the due process clause of the Fifth Amendment of the Constitution?

(d) And, as thus construed, would Section 75 (n) be an invasion of the powers reserved to the state by the Tenth Amendment and a violation of the property rights of the third person theretofore determined by the law of the state in which the property was located?

D.

Reasons Relied on for Allowance of Writ.

The petitioner submits the following reasons why the judgment of the United States Circuit Court of Appeals for the Seventh Circuit should be reviewed by this Court:

1. In holding that Section 75 (n) of the Bankruptcy Act, gave the bankruptcy court jurisdiction of the real property in question, notwithstanding respondents had no right or equity therein inasmuch as the right of redemption had expired under the law of Indiana prior to the time of the filing of their petition, the Circuit Court of Appeals for the Seventh Circuit rendered a decision involving an important, and substantial question of law in conflict with the decision of the Third Circuit in *Shreiner v. Farmers' Trust Co.*, 91

Fed. (2d) 606, 607, cert. den. 302 U. S. 686; the decision of the Fourth Circuit in *Compton v. Birnie Trust Co.*, 76 Fed. (2d) 639, 27 Am. B. R. (N. S.) 671; the decision of the Fifth Circuit in *Glenn v. Hollums*, 80 Fed. (2d) 55; the decision of the Sixth Circuit in *Hoyd v. Citizens Bank of Albany Co.*, 89 Fed. (2d) 105, 107, 108; and the decisions of the Tenth Circuit in *Bastian v. Erickson*, 114 Fed. (2d) 338, and *Buttars v. Utah Mfg. etc. Co.*, 116 Fed. (2d) 622, 624; all of which decisions hold (a) a court of bankruptcy can only acquire jurisdiction over real property under Section 75 of the Bankruptcy Act if the debtor has some right or equity in such property at the time he files his petition for relief, (b) whether debtor has any right or equity in the property must be determined by the law of the state in which the property is located, and (c) if the right or equity of redemption under the state law has expired at the time the petition is filed; then the bankruptcy court cannot acquire jurisdiction of the property under the provisions of Section 75 (n).

2. In holding as above stated, the Circuit Court of Appeals for the Seventh Circuit has construed Section 75 (n) in such manner as to bring its decision in conflict with the following decisions of this Court: *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. ed. 1490, 58 S. Ct. 1025; *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 49 L. ed. 1593, 55 S. Ct. 854, 97 A. J. R. 4106; *Union Land Bank v. Byerly*, 310 U. S. 1, 60 S. Ct. 773, 84 L. ed. 1041; and *First Nat'l Bank v. Staake*, 202 U. S. 141, 50 L. ed. 967, 26 S. Ct. 580; all of which decisions hold that a court of bankruptcy cannot acquire jurisdiction over property in which the debtor has no right or equity under the applicable state law.

3. In so holding, the Circuit Court of Appeals for the Seventh Circuit has construed Section 75 (n) in such manner as to render it unconstitutional in each of the following particulars: (a) although Congress can, pursuant to the

power granted by Article 1, Section 8, Clause 4, of the Constitution, protect, preserve and extend existing rights and interests; yet it cannot divest property rights which have vested under the state law or create property rights, and neither can it revive an interest or right which has ceased to exist prior to the time a debtor comes into the bankruptcy court, *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 79 L. ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106; *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. ed. 1490, 58 S. Ct. 1025; (b) petitioner's property has been taken without due process of law, in contravention of the Fifth Amendment of the Constitution, *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 79 L. ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106; *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. ed. 1490, 58 S. Ct. 1025; *Union Land Bank v. Beyerly*, 310 U. S. 1, 60 S. Ct. 773, 84 L. ed. 1041; *Board of Trade v. Johnson*, 264 U. S. 1, 68 L. ed. 533, 44 S. Ct. 232; and *First Nat'l Bank v. Staake*, 202 U. S. 141, 50 L. ed. 967, 26 S. Ct. 580; and (c) there is an invasion of the powers reserved to the state by the Tenth Amendment with a resulting violation of the property rights of petitioner theretofore determined by the law of Indiana, *Spindle v. Shreve*, 111 U. S. 542, 547, 28 L. ed. 512, 514, 4 S. Ct. 522; *Thompson v. Fairbanks*, 196 U. S. 516, 49 L. ed. 577, 25 St. Ct. 306; *Zartman v. First Nat'l Bank*, 216 U. S. 134, 54 L. ed. 418, 30 S. Ct. 368; *Bailey v. Baker Ice Mach. Co.*, 239 U. S. 268, 60 L. ed. 275, 36 S. Ct. 50; *Carter v. Carter Coal Co.*, 298 U. S. 238, 80 L. ed. 1160, 56 S. Ct. 855; and *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. ed. 1490, 58 S. Ct. 1025.

WHEREFORE, your petitioner prays that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the United States Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify to this Court for its review and determination, on a day certain to be named therein, all proceedings in the case

numbered and entitled on its docket No. 7574, In the Matter of Chancey Ray Brown and Mary G. Brown, Debtors—Chancey Ray Brown and Mary G. Brown, Appellants vs. State Bank of Hardinsburg, Appellee, and that the judgment of said Court may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just, and your petitioner will ever pray.

STATE BANK OF HARDINSBURG,

Petitioner.

By TELFORD B. ORBISON,

Counsel for Petitioner.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

A.

Opinion of the Court Below.

The opinion of the Circuit Court of Appeals is not reported. It is set forth in the record at pages 86 to 90 and in the Appendix, *infra*, at pages 30 to 34. The dissenting opinion will be found in the Record at pages 90 to 93 and in the Appendix at pages 34 to 37.

B.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered on November 8, 1941. The jurisdiction of this Court is invoked under Section 75 (n) of the Bankruptcy Act (49 Stat. 942, c. 792; 11 U. S. C. A. Sec. 203); Section 24 (c) of the Bankruptcy Act (52 Stat. 854; 11 U. S. C. A. Sec. 47); and Section 240 of the Judicial Code, as amended (48 Stat. 926; 28 U. S. C. A. Sec. 347).

C.

Statement of the Case.

Concisely stated the facts are these:

On February 19, 1938, respondents executed and delivered to petitioner their promissory note in the amount of \$2,560.00, and to secure payment thereof gave a mortgage on 125 acres of farm land in Orange County, Indiana. (R. 55.)

On November 20, 1939, petitioner obtained a judgment of foreclosure in the Orange Circuit Court of Orange County,

Indiana, and a decree was entered on that date foreclosing the mortgage and ordering the 125 acres to be sold to pay and satisfy the judgment. No process issued for the execution of said judgment or decree of sale until after the lapse of one year from the filing of the original complaint on March 4, 1939, but, upon execution being issued upon the decree of foreclosure after such expiration, the sheriff of Orange County duly sold the 125 acres on May 25, 1940, to petitioner. (R. 57.)

Respondents did not redeem at any time prior to the sheriff's sale, or at any other time. (R. 57.)

On May 28, 1940, respondents filed their petition under Section 75 of the Bankruptcy Act with the Clerk of the United States District Court for the Southern District of Indiana, New Albany Division, and accompanied the same with schedules, in which they listed, among other property, the 125 acres. (R. 57.)

On June 1, 1940, the sheriff of Orange County executed and delivered a deed to the 125 acres to petitioner. (R. 57.)

On June 30, 1940, petitioner filed its motion to strike the 125 acres from the schedules, on the ground that at the time the petition was filed on May 28, 1940, the respondents had no right or equity in the property, inasmuch as the period of redemption had expired with the sheriff's sale. (R. 57.)

On November 20, 1940, the District Court, after hearing the motion to strike, filed its special findings of fact and conclusions of law and on the same date entered judgment wherein it was ordered that the motion to strike the 125 acres from the schedules be sustained and it was further ordered that said 125 acres be stricken from the schedules and that the bankruptcy proceedings should be dismissed in so far as it pertained to said 125 acres, and the Conciliation Commissioner was ordered and directed to make his report without taking action upon and expressly excepting therefrom said 125 acres. (R. 59 to 61.)

D.

Assignments of Error.

The Circuit Court of Appeals erred:

1. In holding that Section 75 (n) of the Bankruptcy Act gave the District Court, sitting as a court of bankruptcy jurisdiction over the real property in question in which, under the law of Indiana, the respondents had no right or equity or interest of any nature at the time they filed their petition for relief.
2. In holding that Section 75 (n), thus construed, was within the bankruptcy power of Congress, as granted by Article 1, Section 8, Clause 4, of the Constitution.
3. In refusing to hold that Section 75 (n), thus construed, did not violate petitioner's rights as guaranteed by the Fifth Amendment of the Constitution.
4. In refusing to hold that Section 75 (n), thus construed, was not an invasion of the powers reserved to the state by the Tenth Amendment.

E.

Argument.

Summary of argument:

1. Whether respondents had any right or equity in the property in question within the provisions of Section 75 (n) of the Bankruptcy Act must be determined by the law of Indiana.
2. Under the Indiana law the right of redemption was cut off by the sheriff's sale, and inasmuch as respondents did not file their petition for relief under Section 75 until after such sale they had no right or equity in the property and, as a consequence, the bankruptcy court could not obtain jurisdiction over it.

3. The fact that the sheriff's deed was not delivered to petitioner, as purchaser, until after the petition was filed did not operate to give the bankruptcy court jurisdiction of the property under the provisions of Section 75 (n).

4. In amending Section 75 (n) Congress merely intended to clarify the original provisions of the subsection so as to make certain the farmer and his property would come within the jurisdiction of the bankruptcy court "after foreclosure and during the period of redemption". It did not intend to give the farmer any new property right or to subject the real estate to the jurisdiction of the bankruptcy court after the period of redemption had terminated.

5. In holding that the provisions of Section 75 (n) gave the bankruptcy court jurisdiction of the property in question, although the period of redemption had expired at the time the petition was filed, the Seventh Circuit Court of Appeals rendered a decision involving an important and substantial question of law and in conflict with the decisions of the Third, Fourth, Fifth, Sixth and Tenth Circuits, as well as the decisions of the Supreme Court of the United States.

6. The construction placed on Section 75 (n) by the Seventh Circuit renders it unconstitutional, because not within the bankruptcy power of Congress, as provided in Article 1, Section 8, Clause 4, and also because violative of the Fifth and Tenth Amendments.

The decision of the Seventh Circuit Court of Appeals completely disregards the property rights of petitioner as established and protected by the law of the State of Indiana. Contrary to principle and precedent it authorizes a court of bankruptcy to assume jurisdiction over property in which the debtor has no right or equity. It construes

Section 75 (n)⁴ of the Bankruptcy Act in such manner as to give Congress a power far greater than it actually possesses under the bankruptcy power of the Constitution. It arbitrarily takes property from one person and, without just compensation, gives it to another, in contravention to the Fifth Amendment and it results in a direct invasion of the powers reserved to the State by the Tenth Amendment.

The decision is so contrary to fundamental and established principles of property law, so clearly misinterprets the Congressional intent, and in such conflict with the various decisions of the other Circuit Courts of Appeal, as well as the decisions of this Court, it is imperative that certiorari be granted in order that the important and substantial questions involved may be carefully considered and determined.

That the sheriff's sale cut off respondents' right of redemption is beyond question, in view of the provisions of Sections 3-1801, 3-1803, 3-1806 and 3-1808 of Burns Indiana Statutes, 1933. (App. pp. 23-27.) And just as uncontrovatable is the proposition that after this right of redemption was cut off the respondents had no right or equity or interest whatever in the property. *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 508-511, 514, 82 L. ed. 1490, 1496-1498, 1500, 58 S. Ct. 1025; *Shreiner v. Farmers' Trust Co.*, (3rd C. C. A.) 91 Fed. (2d) 606, cert. den. 302 U. S. 686; *Glenn v. Hollums*, (5th C. C. A.) 80 Fed. (2d) 55; *Hubble v. Berry*, 180 Ind. 513, 519, 103 N. E. 328; *State ex rel. Miller v. Bender*, 102 Ind. App. 185, 1 N. E. (2d) 662.

What right or equity *could* respondents have had in the 125 acres at the time they filed their petition for relief under Section 75? They had lost their right of redemption because the property had been previously sold to

⁴ See pp. 5 and 6 of this brief for complete text.

~~petitioner~~ at the sheriff's sale. They could not convey or mortgage. They had no rights of possession. In short, they had nothing. All of the rights and incidents of ownership had passed from them to petitioner.

The fact the sheriff's deed was not executed and delivered until after the petition was filed is quite unimportant, notwithstanding the majority opinion of the Seventh Circuit to the contrary. Section 3-1806 of Burns Indiana Statutes, 1933, imposed the duty on the sheriff to execute and deliver a deed to the purchaser "immediately after such sale". Respondents had no power to prevent the delivery of the deed or to prohibit or interfere with its becoming effective and hence had no right or equity in this respect. On the contrary petitioner had the right to mandate the sheriff to perform his duty. *Jessup, et al. v. Carey*, 61 Ind. 584; *Hubble v. Berry*, 180 Ind. 513, 103 N. E. 328; *State ex rel. Miller v. Bender*, 102 Ind. App. 185, 1 N. E. (2d) 662, 663; *Glenn v. Hollums*, (5th C. C. A.) 80 Fed. (2d) 55. Surely it is a novel development in the judicial process for the Seventh Circuit to condition the jurisdiction of the bankruptcy court on whether the sheriff performs his statutory, mandatory duty.

Of course the truth is the delivery of the sheriff's deed was purely an incidental matter. The sheriff's sale terminated all interest of any kind which respondents had in the property and from that time on the petitioner was recognized under the law of Indiana as the absolute owner. *Hubble v. Berry*, 180 Ind. 513, 519, 103 N. E. 328 (quoted with approval in *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 509, N. 6, 82 L. ed. 1490, 1497, N. 6); *State ex rel. Miller v. Bender*, 102 Ind. App. 185, 1 N. E. (2d) 662, 663.

The execution and delivery of the deed was merely a ministerial act imposed on the sheriff by the statute and the time and manner of the performance of this act did

not and could not affect the property rights of the parties which had been settled and determined by the sale. *Hubble v. Berry*, 180 Ind. 543, 519, 103 N. E. 328; *State ex rel. Miller v. Bender*, 102 Ind. App. 185, 1 N. E. (2d) 662, 663; *Glenn v. Hollums*, (5th C. C. A.) 80 Fed. (2d) 55; *Shreiner, et al. v. Farmers' Trust Co. of Lancaster*, (3rd C. C. A.) 91 Fed. (2d) 606, 607; *First Nat'l. Bank v. Staake*, 202 U. S. 141, 50 L. ed. 967, 26 S. Ct. 580; 19 R. C. L. Sec. 442; 42 C. J. Sec. 1891.

Nor did Congress intend for Section 75 (n) as amended in 1935 to give a court of bankruptcy jurisdiction over property where the right of redemption had expired at the time the farmer-debtor filed his petition for relief. An examination of the history of the subsection clearly shows that the Congressional intent in passing the 1935 amendment was to set at rest the conflict which had arisen in the various district and circuit courts as to whether the right or equity of redemption was to be included in the term "property" as used in Section 75 (n) as originally adopted. (See Annotation in 99 A. L. R., pp. 1390-1393; H. R. Report No. 1808, p. 2, 74th Congress, First Session; Senate Report No. 985, pp. 1 and 2, 74th Congress, First Session.)

As was stated on the floor of the Senate, the amendment was for the purpose of clarification so as to permit the farmer to take advantage of Section 75 "after foreclosure and during the period of redemption". (Congressional Record, Vol. 79, Part 15, page 15632, Aug. 19, 1935—Set out in full in Appendix at pages 27-30.) (Our emphasis.)

In holding that the District Court, sitting as a court of bankruptcy, acquired jurisdiction under Section 75 (n) of the property in question on the ground the sheriff's deed had not been delivered at the time the petition was filed, despite the fact the right of redemption had expired under the law of Indiana, the Seventh Circuit departed from the

following fundamental and well-established principles of law which have been consistently followed by the various Circuit Courts of Appeal, as well as by this Court:

1. A court of bankruptcy can only acquire jurisdiction over real property under Section 75 of the Bankruptcy Act if the debtor has some right or equity in such property at the time he files his petition for relief.

2. Whether debtor has any right or equity in the property must be determined by the law of the state in which the property is located.

3. If the right or equity of redemption under the applicable state law has expired at the time the petition is filed, then the bankruptcy court cannot acquire jurisdiction of the property under the provisions of Section 75 (n).

As a result, the Seventh Circuit rendered a decision involving important and substantial questions of law in conflict with the cases of *Shreiner v. Farmers' Trust Co.*, (3rd C. C. A.) 91 Fed. (2d) 606, 607, cert. den. 302 U. S. 686, *Compton v. Birnie Trust Co.*, (4th C. C. A.) 76 Fed. (2d) 639, 27 Am. B. R. (N. S.) 671; *Glenn v. Hollums*, (5th C. C. A.) 80 Fed. (2d) 55; *Hoyd v. Citizens Bank of Albany Co.*, (6th C. C. A.) 89 Fed. (2d) 105, 107, 108; *Bastain v. Erickson*, (10th C. C. A.) 114 Fed. (2d) 338; and *Buttars v. Utah Mfg. etc. Co.*, (10th C. C. A.) 116 Fed. (2d) 622, 624; all of which hold that if the equity or right of redemption has expired at the time of the filing of the petition under Section 75, the bankruptcy court has no jurisdiction because the debtor does not have any right or equity in the property. These cases further hold, as against the Seventh Circuit's decision, that whether the debtor has any right or equity in the property at the time of filing the petition must be determined by the law of the state in which the property is located, and that if under the applicable state law the debtor has no such right of equity the jurisdiction of the bankruptcy court does not attach.

The Seventh Circuit's decision also conflicts with the decisions of this Court, which unequivocally hold that a court of bankruptcy cannot acquire jurisdiction over property in which the debtor has no right or equity under the applicable state law. *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. ed. 1490, 58 S. Ct. 1025; *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 79 L. ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106; *Union Land Bank v. Byerly*, 310 U. S. 1, 60 S. Ct. 773, 84 L. ed. 1041; *Board of Trade v. Johnson*, 264 U. S. 1, 68 L. ed. 533, 44 S. Ct. 232; and *First Nat'l. Bank of Staake*, 202 U. S. 141, 50 L. ed. 967, 26 S. Ct. 580. And the Wright case expressly holds that where, under the state law, the period of redemption has expired at the time the debtor files his petition, the bankruptcy court cannot acquire jurisdiction of the property under Section 75 (n). *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 514, 82 L. ed. 1490, 1500, 58 S. Ct. 1025.

Turning now to the constitutional questions presented, the petitioner submits that, unquestionably, as stated by Judge Major in his dissenting opinion, the construction placed upon Section 75 (n) by the majority of the Court of the Seventh Circuit renders it unconstitutional.

Undoubtedly Article 1, Section 8, Clause 4, of the Constitution gives broad power to Congress in the matter of bankruptcy legislation and under such power Congress can protect, preserve and extend existing rights and interests, even to the extent of modifying and affecting property rights established by state law. But it is equally true Congress was not given the power to create property rights or revive or re-create an interest or right that has ceased to exist prior to the time a debtor comes into the bankruptcy court. *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. ed. 1490, 58 S. Ct. 1025; *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 79 L. ed. 1593, 55 S. Ct. 854,

97 A. L. R. 1106; and *Union Land Bank v. Byerly*, 310 U. S. 1, 60 S. Ct. 773, 84 L. ed. 1041.

As so pertinently observed by Judge Major, "It (Congress) can administer to the patient as long as a spark of life remains, but when that spark is extinguished, its power no longer exists."

Furthermore, the Seventh Circuit's construction results in Section 75 (n), being violative of the due process clause of the Fifth Amendment. A man's property, title to which has been lawfully acquired by state law in such manner that by state law no other person can legally assert any right, title, claim or interest therein, cannot thereafter be taken from him and given to another without the due process clause being violated. *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 79 L. ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106; and *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. ed. 1490, 58 S. Ct. 1025.

Finally, as thus construed, Section 75 (n) constitutes an invasion of the powers reserved to the state by the Tenth Amendment with the result there is a violation of the property rights of the petitioner theretofore determined by the law of Indiana. *Spindle v. Shreve*, 111 U. S. 542, 547, 28 L. ed. 512, 514, 4 S. Ct. 522; *Thompson v. Fairbanks*, 196 U. S. 516, 49 L. ed. 577, 25 S. Ct. 306; *Zartman v. First Nat'l. Bank*, 216 U. S. 134, 54 L. ed. 418, 30 S. Ct. 368; *Bailey v. Baker Ice Mach. Co.*, 239 U. S. 268, 60 L. ed. 275, 36 S. Ct. 50; *Carter v. Carter Coal Co.*, 298 U. S. 238, 80 L. ed. 1160, 56 S. Ct. 855.

This court clearly recognized these constitutional limitations in *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. ed. 1490, 58 S. Ct. 1025, where, before and after pointing out the various ways in which Congress has modified and affected the property rights established by state law, said:

"* * * The debtor has a right of redemption of which the purchaser is advised, and until that right

of redemption expires the rights of the purchaser are subject to the power of the Congress over the relationship of debtor and creditor and its power to legislate for the rehabilitation of the debtor. * * * (Our emphasis.)

"Such action does not indicate a disregard of the property rights created by state law. The state law still establishes the norm to which Congress must substantially adhere; a serious departure from this norm, *i. e.*, from the quality of the property rights created by the state courts, has led to condemnation of the Federal action as constituting a deprivation of property without due process."

Petitioner submits the decision of the Seventh Circuit Court of Appeals constitutes a serious departure from "this norm" and as a result broadens the jurisdiction of Section 75 (n) into the realm of unconstitutionality.

In conclusion, petitioner submits, for the reasons assigned, his petition for writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioner.

APPENDIX.

Relative Indiana Mortgage Foreclosure Statutes.**Section 3-1801, Burns Indiana Statutes, 1933:**

Mortgages executed after June, 1931—Time of issuing execution—Sale—Notices.—In any proceeding for the foreclosure of any mortgage hereafter executed on real estate, no process shall issue for the execution of any such judgment or decree of sale for a period of one (1) year after the filing of a complaint in any such proceeding: Thereafter, upon the filing of a praecipe therefor by any judgment creditor in said proceeding a copy of the judgment and decree shall be issued and certified by the clerk under the seal of the court, to the sheriff, who shall thereupon proceed to sell the mortgaged premises or so much thereof as may be necessary to satisfy the judgment, interests and costs, at public auction at the door of the court-house of the county in which said real estate is situated by advertising the same by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation printed in the English language and published in the county where the real estate is situated, the first of which publication shall be made, at least thirty (30) days before the date of sale and by posting written or printed notices thereof in at least three (3) public places in the township in which the real estate is situated, and at the door of the court-house of the county: Provided, That if the sheriff be unable to procure the publication of such notice within such county he may dispense with such publication but he shall in his return state his inability to procure such publication and the reason therefor. (Acts 1931, ch. 90, Sec. 1, p. 257.)

Section 3-1802, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Real estate in more than one county—Jurisdiction.—When the mortgaged real estate shall lie in more than one (1) county the court of either county shall have jurisdiction of an action for the foreclosure of the mortgage thereon and all the real estate shall be advertised and sold in the county where the action is brought unless the court in its discretion shall otherwise order and direct. (Acts 1931, ch. 90, Sec. 2, p. 257.)

Section 3-1803, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Redemption before sale—Satisfaction of judgment—Redemption by part owner.—At any time prior to the sale, any owner or part owner of the real estate may redeem the same from the judgment by payment to the clerk, prior to the issuance to the sheriff of the judgment and decree or to the sheriff thereafter, of the amount of the judgment, interest and costs, for the payment or satisfaction of which the sale was ordered, in which event no process for the sale of the real estate under such judgment shall be issued or executed but the officer so receiving payment shall satisfy such judgment and the order of sale shall be vacated: Provided, That if the real estate be so redeemed by a part owner he shall have a lien on the several shares of the other owners for their respective shares of the redemption money with interest at the rate of eight (8) per cent per annum thereon and his costs of redemption, which lien shall be of the same force and effect as the judgment lien so redeemed, and enforceable by appropriate legal proceedings. (Acts 1931, ch. 90, Sec. 3, p. 257.)

Section 3-1804, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Sale of entire body of mortgaged real estate.—In selling such real estate

it shall not be necessary for the sheriff to first offer the rents and profits or separate portions or parcels of the real estate but the whole body of the mortgaged real estate together with rents, issues, income and profits thereof shall be offered and sold, unless the court in its judgment and order of sale shall have otherwise ordered and directed; and if any part of the judgment, interest and costs remains unsatisfied the sheriff shall forthwith proceed to levy the residue on the other property of the defendant. (Acts 1931, ch. 90, Sec. 4, p. 257.)

Section 3-1805, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Sheriff not to purchase—Failure of purchaser to pay—Resale—Disposal of proceeds.—No sheriff or deputy sheriff making any such sale shall directly or indirectly purchase any property so sold. If the purchaser of any property sold on such foreclosure shall fail to immediately pay the purchase-money the sheriff shall resell the property either on the same day without advertisement or on a subsequent day after again advertising the same as above provided, as the judgment creditor may thereupon direct and if the amount bid at the second sale shall not equal the amount bid at the first sale, and the costs of the second sale, the first purchaser shall be liable for the deficiency and damages thereon not exceeding ten (10) per cent and interest and costs to be recovered in the proper court by such sheriff. When property shall be sold for more than will satisfy such judgment, interest and costs, the sheriff shall pay the overplus to the clerk of the court to be disposed of as the court shall direct. Every sale made pursuant to this act shall be without relief from valuation or appraisement laws and without any right of redemption therefrom. (Acts 1931, ch. 90, Sec. 5, p. 257.)

Section 3-1806, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Sheriff's deeds—Rights conveyed.—Immediately after such sale the sheriff

shall execute and deliver to the purchaser a deed of conveyance for the premises which shall be valid and effectual to convey all the right, title and interest held or claimed by all of the parties to said action and all persons claiming under them, and thereupon make due return to the clerk of the court. (Acts 1931, ch. 90, Sec. 6, p. 257.)

Section 3-1807, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Receiver—Rights and duties—Right of resident owner to possession—Rights of crop owner.—In all cases at any time prior to such sale, the court upon the application of the plaintiff may appoint a receiver who shall take possession of the mortgaged premises, collect the rents, issues, income and profits thereof and apply the same to the payment of all taxes, assessments, insurance premiums and repairs required in his judgment to preserve the security of the mortgage debt, and promptly file his final report thereof with the clerk of said court, and subject to the approval of said court account for and pay over to the clerk, subject to the further order of the court, any balance of such income or other avails in his possession then remaining: Provided, That if the mortgaged premises is actually occupied as a dwelling by the record owner of the fee-simple title, he shall be permitted to retain possession thereof, rent free, until such sale, so long as he continues to pay the taxes and special assessments levied against such mortgaged premises and does not suffer waste or other damage to the premises, in the judgment of the court. If the record owner of the fee-simple title does not pay the taxes and special assessments levied against the mortgaged premises, he shall be permitted to retain possession of that part of the mortgaged premises, not exceeding fifteen (15) acres, which is actually occupied as a dwelling by the record owner of the fee-simple title, rent free, until such sale, so long as he does not suffer waste or other damage to the premises in the judgment of the court; and, Provided, further, That the owner of any

crops growing on the mortgaged premises at the time of the commencement of such action, other than the owners of fee-simple title or his or her assigns, shall have the right to enter said premises and care for and harvest said crops at any time within one (1) year from the time of filing such action. (Acts 1931, ch. 90, Sec. 7, p. 257.)

Section 3-1808, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Redemption.—There shall be no redemption from foreclosures of mortgages hereafter executed on real estate except as provided for under this act. (Acts 1931, ch. 90, Sec. 8, p. 257.)

Section 3-1809, Burns Indiana Statutes, 1933:

Mortgages executed prior to June 30, 1931—Laws effective.—The laws of the state of Indiana now in force shall apply to the foreclosure of any mortgage executed prior to the taking effect of this act. (Acts 1931, ch. 90, Sec. 9, p. 257.)

**Congressional Record, Volume 79, Part 15, Page 15632,
August 19, 1935.**

Farm-Mortgage Relief.

The Senate resumed the consideration of the bill (S. 3002) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and amendatory thereof and supplementary thereto.

The Vice President: The clerk will state the first amendment reported by the Committee on the Judiciary.

The first amendment was, in section 4, page 3, line 15, after the word "expired", to insert "or where a deed of trust has been given as security", so as to read:

(n) The filing of a petition or answer with the clerk of

court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under Section 75 of this act, as amended, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

Mr. Borah: Mr. President, the measure is here by reason of the decision of the Supreme Court on what is known as the Frazier-Lemke bankruptcy measure which was passed at the last session.

The Supreme Court held a portion of that act, subsection (s), unconstitutional. The purpose of the bill is to avoid the objectionable feature of the former act as they were denounced by the Supreme Court.

In the first place, however, it ought to be said that we undertook to make some amendments in section 75 before we got to subsection (s). These amendments are for the purpose of clarifying section 75. Some of the courts have held that the farmer debtor could not take advantage of the act *after foreclosure sale and during the period of redemption*. The bill undertakes to clarify it so as to permit the farmer to take advantage of section 5 after foreclosure and during the period of redemption.

Some of the courts also refused to permit the farmer who was in that position to file his petition, although under the law of the State he was in possession and full control of the property and could redeem it during the period of moratorium established by the States. One of the amend-

ments to section 5 takes care of that objection which was raised by the court.

Amended subsection (s) construes, interprets, and clarifies both subsections (n) and (o) of section 5. By reading subsections (n) and (o) as now enacted, *it becomes clear that it was the intention of Congress, when it passed section 75, that the debtor and all of his property should come under the jurisdiction of the court of bankruptcy, and that the benefits of the act should extend to the farmer prior to confirmation of sale and during the period of redemption. In other words, the amendments provide that the farmer may avail himself of the act after foreclosure and during the period of redemption, and may also avail himself of the act during the period of the moratorium provided for him within the State.*

It also provides that when the action is taken under section 75 all of the property of the farmer shall be included in the schedules and appraised.

These amendments are for the purpose of clarification of section 75. Now we come to subsection (s). . . .
(Italics and emphasis ours.)

IN THE UNITED STATES CIRCUIT COURT OF APPEALS,

For the Seventh Circuit.

No. 7574.

October Term and Session, 1941.

In the Matter of

Chancey Ray Brown and
Mary G. Brown,
Debtors.Chancey Ray Brown and
Mary G. Brown,
Appellant's,
vs.
State Bank of Hardinsburg,
Appellee.Appeal from the District
Court of the United
States for the Southern
District of Indiana, New
Albany Division.

November 8, 1941.

Before EVANS, MAJOR, and MINTON, *Circuit Judges.*

MINTON, Circuit Judge. On March 4, 1939, the appellee filed in the Circuit Court of Orange County, Indiana, a complaint to foreclose a mortgage given by the appellants to the appellee, on a certain tract of land in Orange County, Indiana, consisting of one hundred and twenty-five acres.

On September 25, 1939, appellee filed its amended complaint, making certain judgment creditors of the appellants parties. On November 20, 1939, the court entered a judgment of foreclosure, and authorized the sale of said land. After the expiration of a year from the date of filing the complaint for foreclosure, the sheriff of Orange County sold the real estate to the appellee on May 25, 1940, and on June 1, 1940, delivered a deed therefor to the appellee.

On May 28, 1940, an entry was made in the Clerk's Docket in the District Court for the Southern District of Indiana, which recited that the appellants filed their voluntary petition in bankruptcy under Sec. 75, but the record

shows, and the District Court found, that they actually filed a regular petition and schedules, although they in good faith intended to file a proceeding under Sec. 75. The appellants realized they had made a mistake and had not filed a petition under Sec. 75, and the record shows that on the same date they withdrew the petition that day filed. The record then recites:

"Comes now the debtors . . . and withdraw their petition filed on May 28, 1940 on account of it being wrongfully filed."

On June 4, 1940, the record shows, a proper petition and schedules were filed under Sec. 75.

We think this withdrawal did not amount to a dismissal. Obviously, the papers were withdrawn from the file for the purpose of correction. This view is supported by the fact that the filing on June 4, 1940, carried the same number on the District Court Docket as was assigned to the case when filed May 28, 1940.

We therefore hold that the second filing was an amendment to the first proceeding, and relates back to the original filing, and therefore there was on May 28, 1940, a proceeding pending under Sec. 75. *United States ex rel. Texas Portland Cement Co. v. McCord*, 233 U. S. 157, 34 S. Ct. 550, 58 L. Ed. 893; *Interstate Refineries, Inc. v. Barry*, 7 F. 2d. 548, 556; *General Orders in Bankruptcy*, 37, *Federal Rules Civil Procedure* 15 (C), 28 U. S. C. A. 723(e), *et seq.*

When the appellants filed their amended petition on June 4, 1940, they scheduled as one of their assets the one hundred and twenty-five acres of land which the sheriff had sold to appellee on May 25, 1940. The appellants moved to strike this land from the bankruptcy schedule and the court sustained the motion, and ordered the land stricken from the schedule. From that order, the appellants prosecute this appeal.

It is the contention of the appellants that since the deed was not delivered until after their petition under Sec. 75 was filed, the property came into the jurisdiction of the bankruptcy court and was properly scheduled. The appellee says the equity of redemption was cut off by the sale on May 25, and therefore there was no property or any equity or right in such property left in the appellants, for the bankruptcy court to assume jurisdiction of.

Burns Indiana Statutes (1933) Sec. 3-1801; provides:

"In any proceeding for the foreclosure of any mort-

gage hereafter executed on real estate, no process shall issue for the execution of any such judgment or decree of sale for a period of one (1) year after the filing of a complaint in any such proceeding

There is no question but what the year had expired before the sale was held, and the regularity of the sale is not questioned. Did the sale cut off the equity of redemption?

Burns Indiana Statutes (1933) Sec. 3-1803, provides:

"At any time prior to the sale, any owner or part owner of the real estate may redeem the same from the judgment by payment to the clerk, prior to the issuance to the sheriff of the judgment and decree or to the sheriff thereafter, of the amount of the judgment, interest and costs, for the payment or satisfaction of which the sale was ordered, in which event no process for the sale of the real estate under such judgment shall be issued or executed but the officer so receiving payment shall satisfy such judgment and the order of sale shall be vacated"

The Indiana courts have not construed this provision of the statute. Counsel on both sides agreed the statute had not been construed by the Indiana courts, and we are unable to find any case construing this section. We decline to anticipate by our decision what the construction of this statute by the Indiana courts may be. Without deciding, we will assume for the sake of the argument that the equity of redemption is cut off by the sale. Under the practice in Indiana, as we understand it, neither the sale needs to be confirmed, nor the deed of the sheriff approved by the court.

The question therefore narrows down to this: admitting that the equity of redemption was cut off by the sale, did that prevent the bankruptcy court from obtaining jurisdiction of the property where the petition under Sec. 75 was pending before the deed was delivered?

Paragraph (N) of Sec. 75, 11 U. S. C. A. Sec. 203(n), reads in part as follows:

"The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under this section, shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section,

to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

If the statute had stopped with the words "including all real or personal property, or any equity or right in any such property," there would be much force in the argument of appellee that the mortgagor had no equity or right in the property after the equity of redemption was cut off by a regular and legal sale. Then there would be nothing left but the bare legal title. If the sale were invalid, of course, there was no sale and the equity would not be cut off.

The jurisdiction of the bankruptcy court under Sec. 75 does not depend upon the equity of redemption remaining. That is only one of the interests, rights or equities remaining in the mortgagor, which enables him to bring his property into the jurisdiction of the bankruptcy court. This statute has enumerated a number of other things which, if *undone*, entitles the mortgagor to bring the property in question into the jurisdiction of the bankruptcy court, and one of them is "where a deed has not been delivered." The non-delivery of the deed is in no way related to the equity of redemption, or required as a part of the process to cut off the equity of redemption. It is simply a fact which, if it exists at the time the petition in bankruptcy is filed under Sec. 75, is of itself sufficient to cast upon the bankruptcy court jurisdiction of the property.

This is further borne out by the provisions of Paragraph 75(N), which says:

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

This clearly provides if at the time of filing the petition the deed had not been delivered, the period of redemption shall be extended. The lack of delivery of the deed is not coupled with the period of redemption, but is separated by the conjunction "or." The bankruptcy statute in the case where deed has not been delivered and the petition is filed before deed is delivered, not only casts exclusive jurisdiction upon the bankruptcy court, but authorizes extension of the period of redemption "for the purpose of carrying out the provisions of this section."

Since the mortgage in this case was given after the Bankruptcy Act was passed, we think there can be no question of the right of Congress to pass such legislation under its powers to enact bankruptcy legislation. *Wright v. Vinton Branch*, 300 U. S. 440, 470, 57 S. Ct. 556, 81 L. Ed. 736, 112 A. L. R. 1455; *Kalb v. Feuerstein*, 308 U. S. 433, 60 S. Ct. 343, 84 L. Ed. 370.

We therefore hold that since the deed had not been delivered at the time, to wit, May 28, 1940, the petition under Sec. 75 was filed, that the filing of the petition cast upon the bankruptcy court exclusive jurisdiction, and although the equity of redemption may have been cut off by the sale, the bankruptcy statute authorized the avoidance of that fact and an extension of the period of redemption for the purpose of carrying out the salutary provisions of the Bankruptcy Act.

The judgment is

REVERSED.

MAJOR, *Dissenting*.

I do not agree with the construction placed upon the section of the Bankruptcy Act in controversy. In my opinion the debtors, at the time of filing their petition, either had an interest in the property and therefore entitled to the benefits of the Act, or had no interest and not entitled to such benefits. I think the court should take one horn or the other of the dilemma. Apparently the majority takes both.

The opinion assumes that the debtors' equity of redemption terminated with the Sheriff's sale. Why assume? There is no ambiguity in the Statute. By its plain terms, the equity of redemption was terminated. In addition to the provisions of the Indiana Statute quoted in the opinion, Sec. 3-1808 provides as follows:

"Mortgages executed after June, 1931—Redemp-

tion.—There shall be no redemption from foreclosures of mortgages hereafter executed on real estate except as provided for under this act."

Upon the expiration of the period of redemption, every right, claim and interest which the debtors had in the property was extinguished. After the sale the debtors would have had no right to redeem even had they possessed the ability to do so. They could have conveyed nothing by deed or otherwise. As was said in *Glenn v. Hollums*, 80 F. (2d) 555, 557:

*** * * Nothing remains to be done to complete the superior title which passed by the sheriff's sales, except the purely ministerial act of delivering the sheriff's deed, * * * *

Delivery of the deed was not necessary to vest complete ownership in the purchaser. *Schreiner, et al. v. Farmers' Trust Co. of Lancaster*, 91 F. (2d) 606, 607; 19 R. C. L. See. 442. It was only evidence of the title acquired by such purchaser. At most, the debtors retained nothing other than legal title, in trust for the purchaser. 42 C. J. See. 1891. There is no occasion to labor this point further in view of the reasoning of the majority.

It is difficult for me to comprehend the reasoning employed in the construction placed upon Section 75 (n). Perhaps that is the reason I am unable to agree. The phrase "or where deed has not been delivered" is held to "authorize extension of the period of redemption." This, in my opinion, is a fallacious interpretation, inconsistent with the purport of the paragraph when read in its entirety. It is provided that the filing of a petition "• • • shall immediately subject the farmer and all his property, * * * to the exclusive jurisdiction of the court, * * * or any equity or right in any such property, * * * * I think it is readily apparent that all the enumerated circumstances which follow are dependent upon the premises that the debtor, upon filing his petition, be possessed of an "equity of right" in the property. If no such right or equity exists, none of the contingencies, including the one here relied upon, can be effective. For instance, among the contingencies enumerated are—"• * * contracts for purchase, contracts for deed, or conditional sales contracts, * * * * Under the majority construction it would follow that a debtor who, at the time of the filing of his petition, possessed one of these instruments, would bring into the

jurisdiction of the Bankruptcy Court, any land described therein, and this irrespective of the fact that any equity or interest in such land had long before expired. In the same category is the phrase "where deed had not been delivered." There may be situations where the debtor has an "equity or right" until the delivery of a deed. There must be other cases—in fact, this is one—where the extinguishment of his "equity or right" was not dependent upon such delivery.

The construction placed upon the paragraph by the majority would, in my judgment, render it unconstitutional. Neither the Wright nor Kalb case, cited by the majority, sustains such construction. In both those cases, the court was dealing with a property right which the debtor had at the time of the filing of his petition. It seems pertinent to quote what the court in the Kalb case (308 U. S. 433) on page 442, said:

"As stated by the Senate Judiciary Committee in reporting these amendments: ' * * * subsection (n) brings all of the bankrupt's property, wherever located, under the absolute jurisdiction of the bankruptcy court, where it ought to be. Any farmer who takes advantage of this act ought to be willing to surrender all his property to the jurisdiction of the court, for the purpose of paying his debts, and for the sake of uniformity. * * *'"

In *Wright v. Union Central Ins. Co.*, 304 U. S. 502, the court, in discussing the power of Congress to extend the period of redemption, as fixed by State law, on page 514, said:

" * * * The debtor has a right of redemption of which the purchaser is advised, and until that right of redemption expires the rights of the purchaser are subject to the power of the Congress over the relationship of debtor and creditor and its power to legislate for rehabilitation of the debtor. * * *"

Further, on page 518, the court said:

" * * * But if Congress is acting within its bankruptcy power, it may authorize the bankruptcy court to affect these property rights, provided the limitations of the due-process clause are observed."

In *Union Land Bank v. Byerly*, 310 U. S. 1, the court considered whether the debtor had an interest in the land so as to bring it within the jurisdiction of the Bankruptcy

Court, and in deciding adversely to the debtor, on page 10, said:

• • • Since the foreclosure proceedings had been completed and title had passed thereunder prior to the filing of the debtor's petition for reinstatement, it would have been a vain thing to refer the cause to a conciliation commissioner for administration of property which no longer belonged to the debtor. • • •

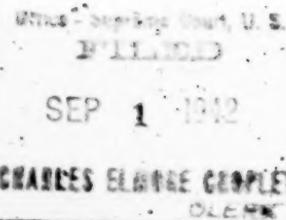
A reading of the cases leaves no doubt of the broad power possessed by Congress in the matter of bankruptcy legislation. The cases are just as convincing, however, that such power is limited to situations where the debtor has some right or interest in the property. Congress can, by legislation, protect, preserve and extend existing rights and interests, but it can not create property rights, nor can it revive an interest or right which has ceased to exist prior to the time a debtor comes into the bankruptcy court. It can administer to the patient as long as a spark of life remains, but when that spark is extinguished, its power no longer exists.

The construction which I place upon the paragraph would give every debtor the benefit of the Act so long as he owned any "equity or right" in the property. I would go no further. I think the action of the District Court was correct and that its order should be affirmed.

Endorsed: Filed Nov. 8, 1941: Kenneth J. Carrick, Clerk.



FILE COPY



IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. **23**

STATE BANK OF HARDINSBURG,

Petitioner,

vs.

CHANCEY RAY BROWN AND MARY G. BROWN,

Respondents.

PETITIONER'S BRIEF.

TELFORD B. ORBISON,

New Albany, Indiana,

Counsel for Petitioner.



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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 920.

STATE BANK OF HARDINSBURG,

Petitioner,

vs.

CHANCEY RAY BROWN AND MARY G. BROWN,

Respondents.

PETITIONER'S BRIEF.

Opinions Below.

The District Court did not deliver an opinion, but only made Special Findings of Fact, and Conclusions of Law (R. 55-59).

The opinion of the Circuit Court of Appeals (R. 86-93), is reported in 124 F. (2d) 701.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered November 8, 1941 (R. 94). The petition for writ of certiorari was filed February 4, 1942, and granted March 30, 1942.

The jurisdiction of this Court is invoked under § 75(n) of the Bankruptcy Act (49 Stat. 942, c. 792; 11 U. S. C. A.

§ 203); Section 24(c) of the Bankruptcy Act (52 Stat. 854; 11 U. S. C. A. Sec. 47); and Section 240 of the Judicial Code, as amended (48 Stat. 926; 28 U. S. C. A. Sec. 347). A detailed statement of jurisdiction will be found in the Petition for Writ of Certiorari at pages 5 and 6.

Statement of the Case.

February 19, 1938, respondents executed and delivered to petitioner, their promissory note in the amount of \$2,500, and to secure payment thereof gave a mortgage on 125 acres of farm land in Orange County, Indiana (R. 55).

March 4, 1939, petitioner instituted foreclosure proceedings in the Circuit Court of Orange County, Indiana, against respondents to foreclose its mortgage (R. 57).

November 20, 1939, petitioner obtained a judgment of foreclosure and a decree was entered on that date foreclosing the mortgage and ordering the 125 acres to be sold to pay and satisfy the judgment (R. 57).

May 25, 1940, the sheriff of Orange County, Indiana, duly sold the 125 acres to petitioner (R. 57). Respondents did not redeem at any time prior to the sheriff's sale or at any other time (P. 57).

May 28, 1940, respondents filed their petition under Section 75 of the Bankruptcy Act with the Clerk of the United States District Court, for the Southern District of Indiana, New Albany Division, and accompanied the same with schedules in which they listed, among other property, the 125 acres (R. 57).

June 1, 1940, the Sheriff of Orange County executed and delivered a deed to the 125 acres to petitioner (R. 57).

June 30, 1940, petitioner filed its motion to strike the 125 acres from the schedules for the reason that at the time the petition was filed, on May 28, 1940, respondents

had no right or equity in the property, in view of the fact that the period of redemption had expired with the Sheriff's sale (R. 57).

November 20, 1940, the District Court, after hearing the motion to strike, filed its special findings of fact and conclusions of law, and on the same date entered judgment wherein it was ordered that the motion to strike the 125 acres from the schedules, be sustained, and it was further ordered that the said 125 acres be stricken from the schedules and that the bankruptcy proceeding should be dismissed, in so far as it pertained to the said 125 acres, and the Conciliation Commissioner was ordered and directed to make his report without taking any action upon and expressly excepting therefrom said 125 acres (R. 59-61).

November 8, 1941, the Circuit Court of Appeals for the Seventh Circuit, by a divided court, reversed the order of the District Court, holding that although under the Indiana law, the right of redemption was cut off by the sheriff's sale, nevertheless the bankruptcy court could acquire jurisdiction under sub-section (n) of Section 75, because the sheriff's deed had not been delivered at the time respondents filed their petition (R. 86). Judge Major in a dissenting opinion, held that inasmuch as the right of redemption had been cut off by the sheriff's sale, the bankruptcy court could not acquire jurisdiction over the property under said sub-section (n) because respondents had no right or equity in the property at the time the petition was filed, and that to hold otherwise would render it unconstitutional (R. 90).

Section 3-1801, Burns Indiana Statutes, 1933, provides that in any proceeding for the foreclosure of any mortgage on real estate, no process shall issue for the execution of any such judgment or decree of sale, for the period of one year, after the filing of the complaint in any such proceeding (R. 88; App. 29).

Section 3-1803, Burns Indiana Statutes, 1933, provides that the owner of mortgaged property which has been foreclosed may redeem at any time prior to the sheriff's sale (R. 88; App. 30).

Section 3-1806, Burns Indiana Statutes, 1933, provides that immediately after the foreclosure sale the sheriff shall execute and deliver to the purchaser a deed of conveyance for the premises, which shall be valid and effectual to convey all the right, title and interest held or claimed by all of the parties to the action, and all other persons claiming under them (App. 31).

Section 3-1808, Burns Indiana Statutes, 1933, provides that there shall be no redemption from foreclosure of mortgages except as provided above (R. 91; App. 33).

Questions Presented.

I. Did the Circuit Court of Appeals for the Seventh Circuit err in holding that the fact that a sheriff's deed is not executed and delivered until after a farmer-debtor files his petition under Section 75 of the Bankruptcy Act, is sufficient to give a court of bankruptcy jurisdiction under sub-section (n) of said Section 75 over real property, where, prior to the filing of the petition, such property has been sold by the sheriff pursuant to a judgment of foreclosure, and, under the applicable state law, there exists no right of redemption or any other right or equity in the property after such sale?

II. Did the Court of Appeals err in holding that Section 75 (n), as thus construed, (a) was within the bankruptcy power of Congress, as granted by Article 1, section 8, clause 4 of the Constitution, (b) did not violate the due process clause of the Fifth Amendment, and (c) was not an invasion of the powers reserved to the states by the Tenth Amendment?

SUMMARY OF ARGUMENT.

Point I.

Section 75 (n) of the Bankruptcy Act Did Not Give the Bankruptcy Court Jurisdiction of the Property in Question, Inasmuch as Respondents' Right of Redemption Had Expired at the Time They Filed Their Petition for Relief With the Result They Had No Right or Equity or Interest of Any Nature Under the Law of Indiana in Such Property.

A. The provisions of Section 75 (n) require that the farmer-debtor at the time of the filing of his petition for relief must be possessed of some equity or right, as determined by the applicable state law, in the property he seeks to subject to the jurisdiction of the bankruptcy court.

B. In amending Section 75 (n) Congress merely intended to clarify the original provisions of the sub-section, so as to make certain the farmer-debtor and his property would come within the jurisdiction of the bankruptcy court "after foreclosure, and during the period of redemption" and did not intend to give the farmer any new property right or to subject real property to the jurisdiction of the bankruptcy court after the period of redemption had terminated.

C. Whether respondents had any right or equity in the property in question so as to bring it within the provisions of Section 75 (n) must be determined by the law of Indiana.

D. Under the Indiana law the right of redemption was cut off by the sheriff's sale, and inasmuch as respondents did not file their petition for relief under Section 75(n) until after such sale, they had no right or equity in the property and, as a consequence the bankruptcy court could not obtain jurisdiction over it.

E. The fact that the sheriff's deed was not delivered to petitioner as purchaser, until after the petition was filed did not operate to give the Bankruptcy Court jurisdiction of the property under the provisions of Section 75(n).

Point II.

The Construction Placed on Section 75 (n) by the Circuit Court of Appeals Renders It Unconstitutional Because Not Within the Bankruptcy Power of Congress as Provided in Article 1, Section 8, Clause 4, and Also Because Violative of the Fifth and Tenth Amendments.

A. Although Article 1, Section 8, clause 4 gives broad power to Congress in the matter of bankruptcy legislation, yet it did not give Congress the power to create property rights or revive or recreate an interest or right which has ceased to exist prior to the time a debtor comes into the bankruptcy court.

B. The due process clause of the Fifth Amendment does not permit a man's property, the title to which has been lawfully acquired by the state law, to be taken from him, and given to another without just compensation.

C. There is an invasion of the powers reserved to the state, by the Tenth Amendment, and a violation of the property right of petitioner, theretofore determined by the law of Indiana.

ARGUMENT.

Point I.

Section 75 (n) of the Bankruptcy Act Did Not Give the Bankruptcy Court Jurisdiction of the Property in Question, Inasmuch as Respondents' Right of Redemption Had Expired at the Time They Filed Their Petition for Relief With the Result They Had No Right or Equity or Interest of Any Nature Under the Law of Indiana in Such Property.

Section 75 (n) of the Bankruptcy Act of 1898, as amended, the construction of which is involved in this case, reads as follows:

"The filing of a petition or answer with the Clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under section 75 of this Act, as amended (this section), shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or

the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

(Act of August 28, 1935; 49 Stat. 942, c. 792; 11 U. S. C. A. Sec. 203.)

It appears to be obvious that under the provisions of this sub-section the farmer-debtor must have some right or equity in the property at the time of the filing of his petition. To hold otherwise would be to completely destroy property rights as established by state law, and further would be contrary to principle and precedent. Nevertheless, the Court of Appeals did hold that although under the Indiana law respondents' right of redemption had been cut off by the sheriff's sale, yet the bankruptcy court did acquire jurisdiction because the sheriff's deed had not been delivered at the time of the filing of the petition. It apparently takes the position that the provisions of sub-section (n) have the force and effect of creating a right or equity in the property in favor of respondents because of the non-delivery of the deed.

The bankruptcy court could only acquire jurisdiction of a property right existent at the time the petition was filed. If, at that time, the period of redemption had expired and respondents could no longer exercise any right or interest in the property, by way of redemption or otherwise, there was nothing of which the court could or would acquire jurisdiction. The delivery of the deed was only incidental—the right to the same could not be defeated by the respondents, by redemption, or otherwise, when and after the petitioner, as foreclosure purchaser, had become entitled to it. The absence of a deed could not hold alive, or recreate a property right which had ceased to exist.

The sub-section includes a number of contingencies under which the bankruptcy court can acquire jurisdiction, and obviously was designed to meet the various events per-

ment under the different provisions of the several states in connection with foreclosure, and that only was or could have been the purpose of the expression of the several and differing conditions whereby the debtor could or would lose his interests in the property foreclosed. The provisions of the said sub-section clearly indicate that the farmer-debtor must have some equity or right in the property at the time he files his petition, in order for the bankruptcy court to acquire jurisdiction. Judge Major, in his dissenting opinion, very clearly demonstrates that this is the proper construction, as shown by the following language:

"It is difficult for me to comprehend the reasoning employed in the construction placed upon Section 75 (n). Perhaps that is the reason I am unable to agree. The phrase 'or where deed has not been delivered' is held to 'authorize extension of the period of redemption.' This in my opinion, is a fallacious interpretation, inconsistent with the purport of the paragraph when read in its entirety. It is provided that the filing of a petition * * * shall immediately subject the farmer and all his property, * * * to the exclusive jurisdiction of the court, * * * or any equity or right in any such property, * * * I think it is readily apparent that all the enumerated circumstances which follow are dependent upon the premise that the debtor, upon filing his petition, be possessed of an 'equity or right' in the property. If no such right or equity exists, none of the contingencies, including the one here relied upon, can be effective. For instance, among the contingencies enumerated are—* * * contracts for purchase, contracts for deed, or conditional sales contracts, * * * Under the majority construction it would follow that a debtor who, at the time of the filing of his petition, possessed one of these instruments, would bring into the jurisdiction of the Bankruptcy Court, any land described therein, and this irrespective of the fact that any equity or interest in such land had long before expired. In the same category is the phrase 'where deed had not been delivered': There may be situations where the debtor

has an 'equity or right' until the delivery of a deed. There must be other cases—in fact, this is one—where the extinguishment of his 'equity or right' was not dependent upon such delivery."

If it can be said that the language of Section 75 (n) is not altogether free from doubt, then it is submitted that an examination of the legislative history of the sub-section, and the cases construing Section 75 removes any such doubt. Such examination clearly shows that it was not the Congressional intent for this sub-section to be construed as was done by the Seventh Circuit.

Originally sub-section (n) merely provided "the filing of a petition praying for relief under this Section, shall subject the farmer and his property, wherever located, to the exclusive jurisdiction of the court." (March 3, 1933, 47 Stat. at L. 1470 Chap. 204, Sec. 75, 11 U. S. C. A. S. C. 203.) The decisions of the various District and Circuit Courts of Appeal were conflicting as to what was to be deemed included under the term "property", especially with reference to state foreclosure laws and the termination thereunder of all the mortgagor's right, title and interest. Some courts held an equity or right of redemption was not "property" within the meaning of sub-section (n),¹ while others held to the contrary.² (See Annotation 99 A. L. R. pages 1390-1393, for discussion of conflicting decisions under old sub-section (n).)

The situation was further complicated because of the fact that a deed of trust is used in many states as a method

1. *Re Bugelt* (1935; D. C.) 10 F. Supp. 113, 27 Am. Bankr. Rep. (N. S.) 538; *Re Chaboya* (1934; D. C.) 9 F. Supp. 174, 27 Am. Bankr. Rep. (N. S.) 147; *Re Smith* (1934; D. C.) 9 F. Supp. 277, 27 Am. Bankr. Rep. (N. S.) 67, affirmed in (1935; C. C. A. 8th), 78 F. (2d) 533, 29 Am. Bankr. Rep. (N. S.) 9; *Re Hageman* (1935; D. C.) 10 F. Supp. 716, 29 Am. Bankr. Rep. (N. S.) 68.

2. *Bridford v. Fahey* (1935; C. C. A. 4th), 76 Fed. (2d) 628, reversed on rehearing in (1935; C. C. A. 4th), 77 Fed. (2d) 992; *Re Duff* (1934; D. C.) 9 F. Supp. 166, 27 Am. Bankr. Rep. (N. S.) 398; *Re Cope* (1934; D. C.) 8 F. Supp. 778, 961, 26 Am. Bankr. Rep. (N. S.) 549, 269; *Re Randall* (1936; D. C.) 20 F. Supp. 470.

of security,³ and also in the fact that in some states the equity of redemption does not expire until the deed has been delivered,⁴ while in others it expires with the foreclosure sale,⁵ and in still others it does not expire until the sale has been confirmed by the court.⁶

It is to be noted, however, that while the cases were in conflict as to whether an equity or right of redemption was such a property right as to give a court of bankruptcy jurisdiction under Section 75, yet there was unanimity in the decisions to the effect that if in fact the equity or right of redemption had expired then the bankruptcy court had no jurisdiction, and that whether the equity or right of redemption had or had no expired must be determined by the law of the particular state in which the property in question was located. (See 99 A. L. R. pages 1389 to 1395.)

At the time Congress revised sub-section (s) in order to bring it within the limitations laid down by this court in *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 79 L. ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106 (holding the Frazier-Lemke Act unconstitutional), it also amended sub-

3. Among the states in which the deed of trust is in common use, are Arizona, California, Colorado, Idaho, Illinois, Iowa, Kansas, Montana, North Carolina, Oklahoma, South Carolina, Tennessee and Texas, mortgages being practically unknown in the latter two states. Volume II Martindale-Hubbell Law Directory; 36 Am. Jur. Section 16-31.

4. This would generally be true in the case of a deed of trust with power of sale. For instance, in Nevada and Oklahoma, it is provided by statute that no equity or right of redemption exists after a sale made under the power of sale contained in a trust deed. Nev. Compiled Laws of 1929, Sections 7710-7716; Okla. Statutes, 1931, Section 11814.

5. In Indiana the mortgagor has the right to redeem up to the time of the foreclosure sale by the sheriff. Burns Indiana Statutes, 1933, Sec. 3-1803. This is also true of Pennsylvania. *Shreiner v. Farmers Trust Co.* (C. C. A. 3) 91 F. (2d) 606, cert. den. 302 U. S. 686; *Re Randall* (D. C. W. D. Pa. 1930) 20 F. Supp. 470.

6. In Ohio the sale is not complete until confirmation by the court. (*Bassett v. Daniels*, 10 Ohio St., 617, 619; *Reed v. Radigan*, 42 Ohio St., 292, 294.) And the mortgagor may redeem at any time prior to confirmation. Throckmorton's 1940 Annotated Code of Ohio, 11690. In Nebraska the right of redemption exists until the sale is confirmed by the court. Compiled Statutes 1929, 20-1530. In Wisconsin (Wisc. Statutes, 1941, C. 278, Minn. (Mason's Minn. Statutes 1927, Sec. 9641) and N. J. (Revised Statutes N. J. 1937, Tit. 2, c. 65, Sec. 12) the sale need not be confirmed by the court.

section (n) by adding the provisions relating to contracts for purchase, contracts for deed, conditional sales contracts, the right or equity of redemption where the period of redemption has not or had not expired, etc.

The committee reports in connection with that legislation (Act of Congress approved Aug. 28, 1935, Public No. 384, 74th Congress) indicate that the reason for the amendment was to make clear it was the intent of Congress that the benefits of the Section should be available to a farmer "during the period of redemption". Statements to this effect are found on page 2 of the Report of the House Committee on the Judiciary (H. R. Report No. 1808, 74th Congress, First Session) and pages 4 and 2 of the Report of the Senate Committee on the Judiciary (Senate Report No. 985, 74th Congress, First Session).

That Congress did not intend to create a new property right, as the Seventh Circuit Court does by its decision, is amply shown by the statements made in debate on the bill (Congressional Record, Volume 79, Part 15, page 15632, August 19, 1935) which are as follows:

"FARM-MORTGAGE RELIEF."

"The Senate resumed the consideration of the bill (S. 3002) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and amendatory thereof and supplementary thereto.

"The Vice President. The clerk will state the first amendment reported by the Committee on the Judiciary.

"The first amendment was, in section 4, page 3, line 15, after the word 'expired', to insert 'or where a deed of trust has been given as security'; so as to read:

"(n) The filing of a petition or answer with the clerk of court, or leaving it with the conciliation commissioner for the purpose of forwarding same to the clerk of court, praying for relief under Section 75 of this act, as amended, shall immediately subject the

farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including among others, contracts for purchase, contracts for deed, or conditional sales contracts, the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not had or had not been confirmed, or where deed had not been delivered, at the time of filing the petition.

"Mr. Borah. Mr. President, the measure is here by reason of the decision of the Supreme Court on what is known as the Frazier-Lemke bankruptcy measure which was passed at the last session.

"The Supreme Court held a portion of that act, subsection (s), unconstitutional. The purpose of the bill is to avoid the objectionable feature of the former act as they were denounced by the Supreme Court.

"In the first place, however, it ought to be said that we undertook to make some amendments in section 75 before we got to subsection (s). These amendments are for the purpose of clarifying section 75. Some of the courts have held that the farmer debtor could not take advantage of the act *after foreclosure sale and during the period of redemption*. The bill undertakes to clarify it so as to permit the farmer to take advantage of section 5 *after foreclosure and during the period of redemption*.

"Some of the courts also refused to permit the farmer who was in that position to file his petition, although under the law of the State he was in possession and full control of the property and could redeem it during the period of moratorium established by the States. One of the amendments to section 5 takes care of that objection which was raised by the court.

"Amended subsection (s) construes, interprets, and clarifies both subsections (n) and (o) of section 5. By reading subsections (n) and (o) as now enacted, it becomes clear that it was the intention of Congress, when it passed section 75, that the debtor and all of his property should come under the jurisdiction of the

court of bankruptcy, and that the benefits of the act should extend to the farmer prior to confirmation of sale and during the period of redemption. In other words, the amendments provide that the farmer may avail himself of the act after foreclosure and during the period of redemption, and may also avail himself of the act during the period of the moratorium provided for him within the State.

"It also provides that when the action is taken under section 75 all of the property of the farmer shall be included in the schedules and appraised.

"These amendments are for the purpose of clarification of section 75. Now we come to subsection (s). . . . (Italics and emphasis ours.)

It is apparent from the remarks made in the Senate, the Congressional intent was to clarify sub-section (n).

" . . . so as to permit the farmer to take advantage of Section 5 *after foreclosure and during the period of redemption.*" (Emphasis ours.)

The Congressional intent went no further. It was not the intention of Congress to give the farmer any new property right. After the period of redemption had terminated, Congress did not intend that the farmer could still subject real property to the jurisdiction of the bankruptcy court.

There can be no question but that the sheriff's sale which was held prior to the filing of the petition for relief cut off respondents' right of redemption. Section 3-1801, Burns Indiana Statutes, 1933, provides that no process shall issue for the execution of any judgment of foreclosure or decree of sale, for the period of one year after the filing of the complaint. In this case, the complaint was filed on March 4, 1939, and process for execution of the judgment which was rendered on November 20, 1939 was not issued until more than one year after the filing of the complaint (R. 57). Section 3-1803 provides that at any time prior to the sheriff's sale any owner may redeem the property from the judgment, by payment of the amount of the judgment.

interest and costs. Section 3-1808 provides that there shall be no redemption from foreclosure of mortgages, except as above stated.

The sheriff's sale was held on May 25, 1940, and respondents did not file their petition for relief under Section 75 until May 28, 1940. Although the sheriff's sale was held prior to the time respondents filed their petition, yet the sheriff's deed was not executed and delivered to petitioner until June 1, 1940, which was three days after the petition was filed and it is this fact, and this fact alone, which the Court of Appeals says is sufficient to give the bankruptcy court jurisdiction of the 125 acres in question, under and pursuant to the provisions of sub-section (n), notwithstanding under the law of Indiana, the period of redemption had expired at the time the petition was filed, and further, notwithstanding that under such law, respondents then had no right or equity of any kind in the property.

Section 3-1896, Burns Indiana Statutes, 1933, provides:

"Immediately after such sale the sheriff shall execute and deliver to the purchaser a deed of conveyance for the premises which shall be valid and effectual to convey all the right, title and interest held or claimed by all of the parties to said action, and all persons claiming under them and thereupon make due return to the clerk of the court."

This section mandates the sheriff to execute and deliver to the purchaser a deed immediately after the foreclosure sale. The effect of the holding of the Court of Appeals is to condition the jurisdiction of the bankruptcy court on whether the sheriff performs his statutory, mandatory duty, which, to our way of thinking, is a novel development in the judicial process.

The fact that the sheriff's deed was not executed and delivered until after the petition was filed was merely incidental and quite unimportant, notwithstanding the majority opinion of the Court of Appeals to the contrary. Re-

spondents had no power to prohibit or interfere with its becoming effective, and hence had no right or equity in this respect. On the other hand, petitioner had the right to mandate the sheriff to perform his duty. *Jessup, et al. v. Carey*, 61 Ind. 584; *Hubble v. Berry*, 180 Ind. 513, 103 N. E. 328; *State ex rel. Miller v. Bender*, 102 Ind. App. 185, 1 N. E. (2d) 662, 663; *Glenn v. Hollums*, (C. C. A. 5th) 80 Fed. (2d) 55.

At the time respondents filed their petition the land was no longer their property. They could not convey or mortgage it and their right of possession had ceased to exist. In short, they had no interest of any kind in the property, because all the rights and incidents of ownership had passed from them to petitioner, and, as a result, they stood in the same position as a stranger. Nothing remained to be done to complete the superior title which passed by the sheriff's sale, except the purely ministerial act of delivering the sheriff's deed to which petitioner was unconditionally entitled. No confirmation of the sale by the court was necessary, and mere delivery of the deed would unite the legal with the equitable and superior title already vested in the petitioner.

As stated by the Fifth Circuit in *Glenn v. Hollums*, 80 Fed. (2d) 555, in a case where the facts and state law were very similar to those in the instant case:

"By virtue of the sheriff's sales, appellant, concededly acquired an 'equitable and superior' title to the lands prior to the filing of the petitions in bankruptcy. That title was in no sense inchoate. It had vested. It created in the purchaser a property right which can be divested only by due process. It was a title which would support an action for recovery of the land. Appellant's former lien was extinguished, as was also the debt it secured, to the extent of appellant's bids at the sale. The land was no longer the property of the debtors. To the extent of his bid at the sheriff's sale, appellant was no longer a creditor

of, and had no provable claim in bankruptcy against the debtors. Nothing remains to be done to complete the superior title which passed by the sheriff's sales, except the purely ministerial act of delivering the sheriff's deed, to which appellant was, and is unconditionally entitled, and the sheriff ready to perform, without the institution or maintenance of any further 'proceedings'. No confirmation of the sale by the court was necessary. Mere delivery of the deed would unite the legal with the equitable and superior title already vested in appellant. As to the bare legal title remaining in the debtors, they are mere trustees for the purchaser. They have no enforceable interest in the lands by virtue of that title.

"Section 75 of the Bankruptcy Act (11 U. S. C. A. Sec. 203) does not purport to alter or enlarge property rights created by the laws of the states. Courts of bankruptcy must administer the debtor's property as they find it. They cannot undo what has already been lawfully done by a court of competent jurisdiction."

In *First National Bank v. Staake*, 202 U. S. 141, 50 L. ed. 967, 26 S. Ct. 580, this court held that the words "property of the bankrupt" mean only the property to which the bankrupt is beneficially entitled, and do not include property to which he has only a bare legal title. While this case was decided long prior to the enactment of Section 75, yet it is persuasive in determining the extent of the jurisdiction of a bankruptcy court under Section 75 (n).

In *Shreiner v. Farmers' Trust Co.* (C. C. A. 3rd) 91 F. (2d) 606, certiorari denied 302 U. S. 686, the mortgagee on July 17, 1934 caused to be issued a writ of *fieri facias* to sell the real estate. On August 9, 1934, before the sheriff's sale, the debtor filed his petition under Section 75 (a-r). On July 22, 1935, after the first Frazier-Lemke Act had been declared unconstitutional, all proceedings were dismissed. On August 16, 1935 the farm in question was sold by the sheriff. On August 29, 1935 after the second Frazier-Lemke Act had been approved, a petition was

granted for a reinstatement of the proceedings. The extent of the court's opinion insofar as it relates to the case at bar is as follows:

"In the matter of Randall, Bankrupt (decided May 25, 1936) Judge Schoonmaker held that the title to all the debtor's property passed out of the debtor at the time of the sheriff's sale, even before the acknowledgement of the deed, and was complete in the purchaser, and that thereafter the debtor had no equity of redemption in the property. Consequently after the sheriff's sale the Bankruptcy Court had no jurisdiction over the 'mortgaged premises'."

The case to which the court in the above opinion referred was that of *In re Randall* (D. C. W. D. Pa. 1936) 20 F. Supp. 470. Here the facts were, that there had been a foreclosure sale of the property prior to the debtors filing their petition, but there had been no delivery of the sheriff's deed. And among other things, the court said:

"We hold that the title of the debtor under Pennsylvania law passed out of the debtor at the time of the sheriff's sale and was complete in the purchaser when he paid the purchase money on August 8, 1935; and that the debtor had no right of redemption in this property."

In Buttars v. Utah Mtg. etc. Co. (C. C. A. 10th) 116 Fed. (2d) 622, the debtor filed his petition on July 13, 1939, when all but sixteen days of redemption period had expired. The court entered an order giving the debtor sixty days from August 26, 1939, in which to redeem. On November 27, 1939, the debtor being unsuccessful in obtaining a composition under the act filed an amended petition under 75 (s). Also, on November 27, 1939 the sheriff delivered the deed to the purchaser at the foreclosure sale. The opinion does not state which occurred first during the day, but the fact that the court made no specific point of the exact time when the sheriff's deed was delivered and from other language in the opinion it would seem that the delivery of

the sheriff's deed was not of any particular significance. The court said:

"The automatic stay provided in sub-section (n) therefore terminated on October 13, 1939 and the period of redemption of the remaining sixteen days again began to run. The amended petition to come in under sub-section (s) was not filed until November 27, 1939. In the interval the remaining period of redemption had expired, and he had no remaining interest in this property when he filed his amended petition. The property was properly stricken from the bankruptcy proceedings."

So far as we have been able to ascertain there have been no decisions by either the Supreme or Appellate Courts of Indiana, construing Section 3-1801 to Section 3-1809 of Burns Indiana Statutes, 1933, inssofar as the present question is involved, although these sections, which govern all mortgage foreclosures where the mortgages were executed prior to June 30, 1931, were passed by the Legislature in 1931.

However, the position of the highest court of Indiana on the question of what effect the non-delivery of a sheriff's deed has, where the period of redemption has expired, is clearly indicated by the case of *Hubble v. Berry*, 180 Ind. 513-519, 103 N. E. 328. Although this case involves the general statutes in force at that time, relating to executions, sales and redemptions, yet the same principles are involved. One Allen and one Newlin obtained a judgment in a suit on a material men's lien against Berry and thereupon a decree on the judgment was issued to the sheriff commanding him to sell the real estate to satisfy the judgment. This was done and the sheriff issued a certificate of purchase to the purchaser, which was duly recorded in the *lis pendens* record, and then assigned to Hubble. The sheriff sold the property pursuant to the provisions of Section 809, Burns Indiana Statutes, 1908 (Section 766—R. S. 1881), which provided that when any real estate or interest therein shall be sold by the sheriff on execution he shall issue to the

purchaser a certificate of purchase. Section 810, Burns' Indiana Statutes, 1908 (Section 767—R. S. 1881), provided that the owner of the real estate thus sold, shall be entitled to the possession of the same for one year after the date of such sale, and Section 811, Burns' Indiana Statutes, 1908 (768—R. S. 1881), provided that the property could be redeemed at any time within one year from the date of such sale. Berry, the owner of the property and against whom the judgment was obtained, did not redeem within the year, and thereafter Hubble presented the certificate of purchase to the sheriff and demanded and obtained a deed from him, under the provisions of Section 806, Burns' Indiana Statutes, 1908, but this was not done, however, until ten years after the judgment was rendered. Berry contended that the holder of the sheriff's certificate had not, prior to the execution of a deed, anything more than a lien on the real estate and that this lien takes its character from the judgment lien, and was therefore governed by the same period of limitations as the judgment out of which it arose. Hubble contended that the statute prescribed no limitations on the life of a sheriff's certificate of purchase and that mere lapse of time, though greater than the term of existence of a judgment lien, could not impair his right to a sheriff's deed, and that, when so executed, the same related back to the date of the judgment.

The Supreme Court in deciding the issue involved in favor of Hubble said:

"A sheriff's certificate, however, after the expiration of the year for redemption, invests the holder with an equitable estate in the land, of such high character that it only requires his demand for a deed, to ripen it into an absolute legal title."⁷

In *State ex rel. Miller v. Bender*, 102 Ind. App. 185, 1 N. E. (2d) 662, the court in holding that the purchaser of

7. In footnote 2 on page 3 of our petition for Writ of Certiorari, we incorrectly stated that *Hubble v. Berry* involved the old Indiana mortgage foreclosure law.

8. This same language was quoted by this court in footnote 6 in *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502 at page 509.

property at a mechanic's lien foreclosure sale, was entitled to mandamus requiring the sheriff to execute a deed after the expiration of the redemption period, and upon presentation of the certificate, and the sheriff's refusal to execute the deed, notwithstanding the property of the judgment debtor had been misdescribed throughout the proceeding, among other things said:

"It is the duty of the sheriff, after the year of redemption, if the property had not been redeemed as provided by statute, to execute to the certificate holder, upon demand, a sheriff's deed to the property described in the certificate. Section 619, Baldwin's 1934, Section 2-4101, Burns' 1933, Acts 1881 (Sp. Sess.) c. 38, §546, p. 240.

"The Supreme Court in the case of *Jessup et al. v. Carey* (1878), 61 Ind. 584, said:

"It is clear, we think, that, if the appellee was the holder of the certificate of purchase described in his verified complaint, and if at the expiration of one year from the date of the sale mentioned in said certificate, the property sold had not been previously redeemed, as provided for in the first section of said act, then it was the duty of the appellant Jessup, resulting from his office of sheriff, to execute to the appellee a deed of conveyance of said property; and if, in such case, upon the appellee's reasonable request, the appellant Jessup, as such sheriff, failed or refused to execute such deed, he could be compelled by a writ of mandate, to perform his official duty in the premises.

"It is evident from the averments of his complaint, that the appellee was the holder of said certificate of purchase, and that, at the expiration of one year from the date of the sale therein mentioned, he had requested the appellant Jessup, as such sheriff, to execute to him a deed of the property described in said certificate." "

9. The statute involved in this case provided that whenever any real estate should be sold by the sheriff on execution that he should issue a certificate of purchase at the time of the sale, and that at the expiration of one year from the date of the sale, unless the property should have been previously redeemed the purchaser would be entitled to a conveyance of the real estate. Sec. 2-3909 Burns' 1933, Acts 1881 (Sp. Sess. 1881) Section 1 page 593. It will thus be noted, that the same principles are involved as in the instant case.

Up to the time the Court of Appeals rendered its decision in this case it was firmly established that the debtor must have some right or equity in the property he sought to bring within the jurisdiction of the bankruptcy court,¹⁰ and as this Court, in the case of *Wright v. Union Central Life Insurance Company*, 304 U. S. 502, 83 L. Ed. 149, 58 S. Ct. 1025, stated:

"Nothing in Section 75 as it now stands, indicates any intention that the bankruptcy courts assume control over land not previously within the jurisdiction of the bankruptcy court, and already completely divorced from any title of the debtor."

Furthermore, it has long been recognized that whether a person, who is seeking relief under the Bankruptcy Act, has any right or equity in such property must be determined by the law of the state in which the property is located. *Olmstead v. Olmstead*, 216 U. S. 386, 393, 394, 54 L. Ed. 530, 533, 30 S. Ct. 292; *Board of Trade v. Johnson*, 264 U. S. 1, 68 L. Ed. 533, 44 S. Ct. 232; *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 587, 79 L. Ed. 1593, 1603, 55 S. Ct. 854, 97 A. L. A. 1106.

Apparently, the precise question involved in the case at bar, was before this Court in the very recent case of *Wright v. Logan* (Feb. 2, 1942), ___ U. S. ___, 86 L. Ed. 443. However, Mr. Justice Black in writing the opinion of the Court expressly stated, that it was being assumed that the right of redemption existed at the time the petition for relief was filed. Nevertheless, the following language used by him may be said to be indicative, by way of implication,

10: *First Nat'l Bank v. Staake*, 202 U. S. 141, 50 L. Ed. 967, 26 S. Ct. 580; *Board of Trade v. Johnson*, 264 U. S. 1, 68 L. Ed. 533, 44 S. Ct. 232; *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 79 L. Ed. 1593, 55 S. Ct. 854, 97 A. L. A. 1106; *Union Land Bank v. Buerly*, 310 U. S. 1, 60 S. Ct. 733, 84 L. Ed. 1041; *Shreiner v. Farmers' Trust Co.* (3rd C. C. A.) 91 F. (2d) 606, 607, cert. den. 302 U. S. 686; *Compton v. Birnie Trust Co.* (4th C. C. A.) 76 F. (2d) 639, 27 Am. B. R. (N. S.) 671; *Gleno v. Hollums* (5th C. C. A.) 80 F. (2d) 55; *Hoyle v. Citizens Bank of Albany Co.* (6th C. C. A.) 89 F. (2d) 105, 107, 108; *Bastian v. Erickson* (10th C. C. A.) 114 F. (2d) 338; *Buttars v. Utah Mtg. etc. Co.* (10th C. C. A.) 116 F. (2d) 622, 624; *Re Renardanz* (C. C. A. 7th) 91 F. (2d) 410.

of this Court's position as to the necessity of a farmer-debtor having some right or equity in the property, at the time he files his petition, in order to bring such property within the jurisdiction of the bankruptcy court:

"It is nevertheless appropriate to point out at this time that whatever right of redemption the petitioners had when they first applied for adjudication under 75 continued to be a part of their assets, subject to administration by the bankruptcy court. For 75.(n) subjects all the farmer-debtor's assets, specifically including rights of redemption, to the jurisdiction of the bankruptcy court, and provides that 'the period of redemption shall be extended . . . for the period necessary for the purpose of carrying out the provisions of this section.' 11 USCA (Supp. II) §203 (amendment of August 28, 1935, 49 Stat. at L. 942, chap. 792, 11 USCA §203). See *Wright v. Union Cent. L. Ins. Co.*, 304 U. S. 502, 513-516, 82 L. Ed. 1490, 1499-1501, 58 S. Ct. 1025, 36 Am. Bankr. Rep. (N. S.) 950."

Point II.

The Construction Placed on Section 75 (n) by the Circuit Court of Appeals Renders It Unconstitutional Because Not Within the Bankruptcy Power of Congress as Provided in Article 1, Section 8, Clause 4, and Also Because Violative of the Fifth and Tenth Amendments.

Undoubtedly Article 1, Section 8, Clause 4 of the Constitution gives broad power to Congress in the matter of bankruptcy legislation, and that under such power Congress can protect, preserve and extend existing rights and interests, even to the extent of modifying and affecting property rights established by state law. *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 79 L. Ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106; *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 82 L. Ed. 1490, 58 S. Ct. 1025. But it is equally true that Congress was not given the

power to create property rights or revive or re-create an interest or right which has ceased to exist prior to the time the debtor comes into the bankruptcy court, or to legislate where the debtor-creditor relationship does not exist.

As observed by Judge Major:

"It (Congress) can administer to the patient as long as a spark of life remains, but when that spark is extinguished, its power no longer exists."

This limitation of the bankruptcy power was recognized by this Court in *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, at page 514 where it was said:

"* * * The debtor has a right of redemption of which the purchaser is advised, and until that right of redemption expires the rights of the purchaser are subject to the power of the Congress over the relationship of debtor and creditor, and its power to legislate for the rehabilitation of the debtor * * *."

The construction which the Court of Appeals places on Section 75 (n) gives the Congress unlimited power "on the subject of bankruptcies" without regard to the existence of the debtor-creditor relationship, and irrespective of the fact of the vesting of substantive rights under the state law. If the bankruptcy clause can be construed to permit the making of such fundamental changes, Congress would be in a position to subject the commercial and financial life of each state to federal regulation, and as a consequence could re-draw the lines between state and federal government. A similar contention was advanced in *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, 79 L. Ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106, at page 586, but it is submitted such contention is much more persuasive and cogent when applied to the facts in the case at bar.

It is also the contention of petitioner that the decision of the Court of Appeals is violative of the Fifth Amendment for the reason that it results in his property being

taken without due process of law. In reversing the District Court, the Court of Appeals necessarily held that although petitioner had become the owner of 125 acres in question, prior to the time of the filing of respondents' petition for relief, nevertheless thereafter such ownership could be divested and given to another. In other words, the decision results in the creation or re-creation of a property right in favor of respondents and at the expense of the petitioner. It is submitted that a man's property, title to which has been lawfully acquired by state law, in such manner ~~that by such law no other person can legally assert any right, title, claim or interest therein,~~ can not thereafter be taken from him, and given to another without the due process clause being violated.

It was this very thing that caused this Court to hold the original Section 75 (s) unconstitutional, in the *Louisville Joint Stock Land Bank v. Radford* case. What was said there applies with full force and effect to the case at bar, and especially the last two sentences of the opinion, where it is stated:

"For the Fifth Amendment commands that, however great the Nation's need, private property shall not thus be taken, even for a wholly public use without just compensation. If the public interest requires, and permits, the taking of property of the individual mortgagees, in order to relieve the necessities of individual mortgagors, resort must be had to proceedings by eminent domain; so that, through taxation, the burden of the relief afforded in the public interest, may be borne by the public."

The Court of Appeals takes the position that its decision merely extended the period of redemption. But how could this be so, if the right of redemption had terminated prior to the filing of the petition for relief. An extension of time presupposes the existence of the right of equity of redemption. Of course there can be no question that Congress has the power to extend the period of redemption.

But petitioner insists that it does not have the power to create a right or equity of redemption in favor of a farmer-debtor where no such right or equity existed at the time he seeks to avail himself of the provisions of Section 75.

In *Wright v. Union Central Life Insurance Co.*, 304 U. S. 1, 82 L. ed. 1490, 58 S. Ct. 1025, this Court clearly recognized this constitutional limitation when, before and after pointing out the various ways in which Congress has modified and affected the property rights established by the state law, said:

*** The debtor has a right of redemption of which the purchaser is advised; and until that right of redemption expires the rights of the purchaser are subject to the power of the Congress over the relationship of debtor and creditor and its power to legislate for the rehabilitation of the debtor. ***

“Such action does not indicate a disregard of the property rights created by state law. The state law still establishes the norm to which Congress must substantially adhere; a serious departure from this norm, i. e., from the quality of the property rights created by the state courts, has led to condemnation of the Federal action as constituting a deprivation of property without due process.” (Our emphasis.)

As we stated in our brief in support of the Petition for Writ of Certiorari the decision of the Seventh Circuit Court of Appeals constitutes a serious departure from “this norm” and as a result broadens the jurisdiction of Section 75 (n) into the realm of unconstitutionality. The Court of Appeals cites the cases of *Wright v. Vinton Branch*, 300 U. S. 440, 470, 57 S. Ct. 556, 81 L. ed. 736, 112 A. L. R. 1455, and *Kalb v. Feurestein*, 308 U. S. 433, 60 S. Ct. 343, 84 L. ed. 370, in support of its assertion that its construction of Section 75 (n) is within Constitutional limitations. In the former case this Court upheld the validity of Section 75 (s) which Congress had amended in order to eliminate the objectionable features of the

original act, which had been held fatal in the Radford case. There is nothing in the opinion which would support the contention of the Court of Appeals that Congress has the power to enact legislation so as to give a court of bankruptcy jurisdiction over the property to which the debtor had no right or equity at the time of the filing of his petition for relief. In the latter case, this court at page 442 clearly recognized the proposition that the farmer-debtor must have some right or equity in the property at the time he attempts to take advantage of the act. Furthermore, as Judge Major points out in commenting on these cases, this Court was dealing with a property right which the debtor had at the time of filing his petition.

And in *Union Land Bank v. Byerly*, 310 U. S. 1, 7, 8, 9, 60 S. Ct. 773, 84 L. ed. 1041, this Court in considering whether the debtor had an interest in the land so as to bring it within the jurisdiction of the bankruptcy court, and in deciding adversely to the debtor, said:

*** * * Exclusive jurisdiction of the debtor and his property vested in the District Court on the filing of the petition. Up to that time jurisdiction of the debtor and the mortgaged property, was in the state court. Without action by the District Court, the state court could not have proceeded further. But without changing the status of the debtor's right of redemption, the Federal Court gave permission to the state officer to hold the sale. The sale was, however, incomplete until confirmation by the court. Until confirmed it amounted to an unaccepted offer to purchase. No sale was consummated while the bankruptcy proceeding was pending.

*** * * The District Court was right in refusing to refer the reinstated cause to the Conciliation Commissioner. Since the foreclosure proceedings had been completed and the title had passed thereunder prior to the filing of the debtor's petition for reinstatement, it would have been a vain thing to refer the cause to the Conciliation Commissioner for administration of property which no longer belonged to the debtor. * * *

In view of what we have said, as to the lack of power under the bankruptcy clause on the part of Congress to enact Section 75 (n), if it be construed as was done by the Court of Appeals in its decision in this case, we do not deem it necessary to spend much time on petitioner's contention that the decision constitutes an invasion of the powers reserved to the state by the Tenth Amendment. If the sub-section, as thus construed, was not within the bankruptcy power, as granted by Article 1, Section 8, clause 4 of the Constitution, then it would seem to follow, that the decision is in contravention of the Tenth Amendment which declares: "The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively, or to the people."

We deem it sufficient to say that the decision results in a direct invasion of the powers reserved to the state by the Constitution, and a violation of the petitioner's property rights theretofore determined by the courts of the State of Indiana, in accordance with the law of that state. *Spindle v. Shrieve*, 111 U. S. 542, 547, 28 L. ed. 512, 514; *Thompson v. Fairbanks*, 196 U. S. 516, 49 L. ed. 577, 25 S. Ct. 306; *Zartman v. First Nat'l Bank*, 216 U. S. 134, 54 L. ed. 418, 30 S. Ct. 368; *Bailey v. Baker Ice Mach. Co.*, 239 U. S. 268, 60 L. ed. 275, 36 S. Ct. 50; *Carter v. Carter Coal Co.*, 298 U. S. 238, 80 L. ed. 1160, 56 S. Ct. 855.

Conclusion.

Petitioner submits that for the reasons stated herein, the judgment of the Circuit Court of Appeals for the Seventh Circuit should be reversed.

Respectfully submitted,

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APPENDIX.

Relative Indiana Mortgage Foreclosure Statutes.

Section 3-1801, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Time of issuing execution—Sale—Notices.—In any proceeding for the foreclosure of any mortgage hereafter executed on real estate, no process shall issue for the execution of any such judgment or decree of sale for a period of one (1) year after the filing of a complaint in any such proceeding. Thereafter, upon the filing of a praecipe therefor by any judgment creditor in said proceeding a copy of the judgment and decree shall be issued and certified by the clerk under the seal of the court, to the sheriff, who shall thereupon proceed to sell the mortgaged premises or so much thereof as may be necessary to satisfy the judgment, interests and costs, at public auction at the door of the court-house of the county in which said real estate is situated by advertising the same by publication once each week for three (3) successive weeks in a daily or weekly newspaper of general circulation printed in the English language and published in the county where the real estate is situated, the first of which publication shall be made at least thirty (30) days before the date of sale and by posting written or printed notices thereof in at least three (3) public places in the township in which the real estate is situated, and at the door of the court-house of the county: Provided, That if the sheriff be unable to procure the publication of such notice within such county he may dispense with such publication but he shall in his return state his inability to procure such publication and the reason therefor. (Acts 1931, ch. 90, Sec. 1, p. 257.)

Section 3-1802, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Real estate in more than one county—Jurisdiction.—When the mortgaged real estate shall lie in more than one (1) county the court of either county shall have jurisdiction of an action for the foreclosure of the mortgage thereon and all the real estate shall be advertised and sold in the county where the action is brought unless the court in its discretion shall otherwise order and direct. (Acts 1931, ch. 90, Sec. 2, p. 257.)

Section 3-1803, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Redemption before sale—Satisfaction of judgment—Redemption by part owner.—At any time prior to the sale, any owner or part owner of the real estate may redeem the same from the judgment by payment to the clerk, prior to the issuance to the sheriff of the judgment and decree or to the sheriff thereafter, of the amount of the judgment, interest and costs, for the payment or satisfaction of which the sale was ordered, in which event no process for the sale of the real estate under such judgment shall be issued or executed but the officer so receiving payment shall satisfy such judgment and the order of sale shall be vacated; Provided, That if the real estate be so redeemed by a part owner he shall have a lien on the several shares of the other owners for their respective shares of the redemption money with interest at the rate of eight (8) per cent per annum thereon and his costs of redemption, which lien shall be of the same force and effect as the judgment lien so redeemed, and enforceable by appropriate legal proceedings. (Acts 1931, ch. 90, Sec. 3, p. 257.)

Section 3-1804, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Sale of entire body of mortgaged real estate.—In selling such real estate it shall not be necessary for the sheriff to first offer the rents

and profits or separate portions or parcels of the real estate but the whole body of the mortgaged real estate together with rents, issues, income and profits thereof shall be offered and sold, unless the court in its judgment and order of sale shall have otherwise ordered and directed; and if any part of the judgment, interest and costs remains unsatisfied the sheriff shall forthwith proceed to levy the residue on the other property of the defendant. (Acts 1931, ch. 90, Sec. 4, p. 257.)

Section 3-1805, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Sheriff not to purchase—Failure of purchaser to pay—Resale—Disposal of proceeds.—No sheriff or deputy sheriff making any such sale shall directly or indirectly purchase any property so sold. If the purchaser of any property sold on such foreclosure shall fail to immediately pay the purchase-money the sheriff shall resell the property either on the same day without advertisement or on a subsequent day after again advertising the same as above provided, as the judgment creditor may thereupon direct and if the amount bid at the second sale shall not equal the amount bid at the first sale, and the costs of the second sale, the first purchaser shall be liable for the deficiency and damages thereon not exceeding ten (10) per cent and interest and costs to be recovered in the proper court by such sheriff. When property shall be sold for more than will satisfy such judgment, interest and costs, the sheriff shall pay the overplus to the clerk of the court to be disposed of as the court shall direct. Every sale made pursuant to this act shall be without relief from valuation or appraisement laws and without any right of redemption therefrom. (Acts 1931, ch. 90, Sec. 5, p. 257.)

Section 3-1806, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Sheriff's deeds—Rights conveyed.—Immediately after such sale the sheriff shall execute and deliver to the purchaser a deed of con-

veyance for the premises which shall be valid and effectual to convey all the right, title and interest held or claimed by all of the parties to said action and all persons claiming under them, and thereupon make due return to the clerk of the court. (Acts 1931, ch. 90, Sec. 6, p. 257.)

Section 3-1807, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Receiver—Rights and duties—Right of resident owner to possession—Rights of crop owner—In all cases at any time prior to such sale, the court upon the application of the plaintiff may appoint a receiver who shall take possession of the mortgaged premises, collect the rents, issues, income and profits thereof and apply the same to the payment of all taxes, assessments, insurance premiums and repairs required in his judgment to preserve the security of the mortgage debt, and promptly file his final report thereof with the clerk of said court, and subject to the approval of said court account for and pay over to the clerk, subject to the further order of the court, any balance of such income or other avails in his possession then remaining: Provided, That if the mortgaged premises is actually occupied as a dwelling by the record owner of the fee-simple title, he shall be permitted to retain possession thereof, rent free, until such sale, so long as he continues to pay the taxes and special assessments levied against such mortgaged premises and does not suffer waste or other damage to the premises, in the judgment of the court. If the record owner of the fee-simple title does not pay the taxes and special assessments levied against the mortgaged premises, he shall be permitted to retain possession of that part of the mortgaged premises, not exceeding fifteen (15) acres, which is actually occupied as a dwelling by the record owner of the fee-simple title, rent free, until such sale, so long as he does not suffer waste or other damage to the premises in the judgment of the court; and, Provided, further, That the

owner of any crops growing on the mortgaged premises at the time of the commencement of such action, other than the owners of fee-simple title or his or her assigns, shall have the right to enter said premises and care for and harvest said crops at any time within one (1) year from the time of filing such action. (Acts 1931, ch. 90, Sec. 7, p. 257.)

Section 3-1808, Burns Indiana Statutes, 1933:

Mortgages executed after June, 1931—Redemption.—There shall be no redemption from foreclosures of mortgages hereafter executed on real estate except as provided for under this act. (Acts 1931, ch. 90, Sec. 8, p. 257.)

Section 3-1809, Burns Indiana Statutes, 1933:

Mortgages executed prior to June 30, 1931—Laws effective.—The laws of the state of Indiana now in force shall apply to the foreclosure of any mortgage executed prior to the taking effect of this act. (Acts 1931, ch. 90, Sec. 9, p. 257.)

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CHARLES EUGENE CHOPLEY
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1941.

NO. 7574 220 23

STATE BANK OF HARDINSBURG,
Petitioner,

vs.

CHANCEY RAY BROWN and MARY G. BROWN,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO
THE PETITION FOR CERTIORARI TO THE
UNITED CIRCUIT COURT OF APPEALS,
SEVENTH CIRCUIT.

SAMUEL E. COOK,
Huntington, Ind.,
Counsel for Respondents.

(inside)



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**RESPONDENTS' BRIEF IN OPPOSITION TO
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UNITED CIRCUIT COURT OF APPEALS,
SEVENTH CIRCUIT.**

THE OPINION OF THE COURT BELOW

The opinion of the Court of the Seventh Circuit is reported in 124 Federal (2nd) 701; and a copy thereof is carried into the appendix of the petitioner's brief. This case is based on amended subsection (n) August 28, 1935, was decided right and hence there is no ground for certiorari (11 U.S.C.A. —203 (N.)).

JURISDICTION.

The petition is not good. It shows no ground for certiorari. It is conceded by respondents that this court has jurisdiction to issue certiorari in cases where there is a conflict in the decisions; but they contend that this case does not come within that

class and hence certiorari should not be issued. It would be an error to do so.

STATEMENT OF THE CASE.

In its brief (pp. 11-12) petitioner has made a fairly full statement of the case. But it utterly fails to show any conflict with the decisions of other Federal Courts and hence there is no ground for certiorari.

ARGUMENT.

Summary of argument:

1. Whether the respondents timely filed their petition in the court of bankruptcy in order to obtain the relief provided for in Sec. 75 (n) of the Federal Bankruptcy Act as amended in 1935 should be determined by the Federal law, and not the prior Statutes of Indiana. The petition herein was filed under the Federal Law before the deed was delivered. The Statutes of Indiana have nothing to do with the question.

2. Under the Federal law, as amended, the respondents were given the right to file their petition for the relief asked at any time before the confirmation of the sale on foreclosure proceedings, or before the delivery of the deed to the purchaser. (11 U.S.C.A. 203 (N.))

3. The conceded fact that at the time the respondents filed their petition no deed had been delivered to the purchaser-petitioner herein-operated to give the bankruptcy court jurisdiction over the property in controversy.

4. The language of the statute, as amended, too plainly states that in such cases the distressed

farmers may file the petition for the relief even after the sale of the property at any time either before the confirmation of the sale or the delivery of the deed to the purchaser, to fairly admit of any different construction.

5. In holding that the provisions of Sec. 75 (n) gave the bankruptcy court jurisdiction over the property in question, the Seventh Circuit followed both the letter and the spirit of the Act; and the interpretation thereof by this court as evidenced by the opinions cited.

6. The several decisions by other Circuit Courts cited in the petitioner's brief, and claimed to be in conflict with the decision of the Seventh Circuit in this case, were not based on analogous facts and statutory provisions.

The petitioner contends that under the statutory laws of Indiana, as construed by the State courts, the respondents had no right in or title to the lands in controversy, and, therefore, they were not entitled to ask the relief provided for by the Federal statute relied upon. This argument proceeds upon the theory that it was not within the power of Congress to authorize the filing of a petition for such relief after the sale of the property in the foreclosure proceedings, even though no deed had been executed to the purchaser. It is urged that after the sale of the property there remained no right of redemption, under the State statute, and nothing remained to complete the title in the purchaser except execution and delivery of the deed. Congress had the power to extend the period for filing until

the deed was delivered. Wright vs. Union Central 304 U.S. 502. Same in Supreme Court Reporter Vol. 58—p. 1032-33.

This line of argument seemingly overlooks the plenary power of Congress over the subject of bankruptcy. It was one of the purposes of the Federal enactment to make uniform throughout the various jurisdictions, the rules and practices in bankruptcy. If the laws of a given state make no provision for the redemption of property sold on execution or decretal order, nor for the confirmation of any such sale, or the execution and delivery of a deed to the purchaser, the infirmity is in the state law, which must yield to the paramount law of the Federal government.

The mortgage here involved was executed after the enactment of the amendatory legislation; and just as the laws of a state are carried into contracts executed after making of such laws, so the Federal statutes pertaining to matters within the exclusive jurisdiction of the Federal Government, are, by their own force, carried into the body of the state laws, making them yield wherever a conflict exists.

The mortgage contract was made subject to constitutional power in the Congress to legislate on the subject of bankruptcy. Impliedly this was written into the contract between the petitioner and the respondent. Not only are existing laws read into contracts in order to fix obligations between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. Ibid. p. 1033.

In Conclusion: The exercise of the supervisory

power vested in the Supreme Court to revise and review the decisions of the inferior Federal Courts is not exercised except in special cases where there is a conflict in the decisions or some one of the reasons given in Rule 38. No such situation has been shown to exist by the decisions cited in the petitioner's brief in this case. The petition does not bring the instant case within certiorari.

For the reasons stated the respondents respectfully pray that the petition be denied.

Respectfully submitted,

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Huntington, Indiana,
Counsel for Respondents.

ULYSSES S. LESH,
Huntington, Indiana,
of Counsel for Respondents.



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IN THE
Supreme Court of the United States
OCTOBER TERM, 1942.

No. 920

23

STATE BANK OF HARDINSBURG,

Petitioner,

vs.

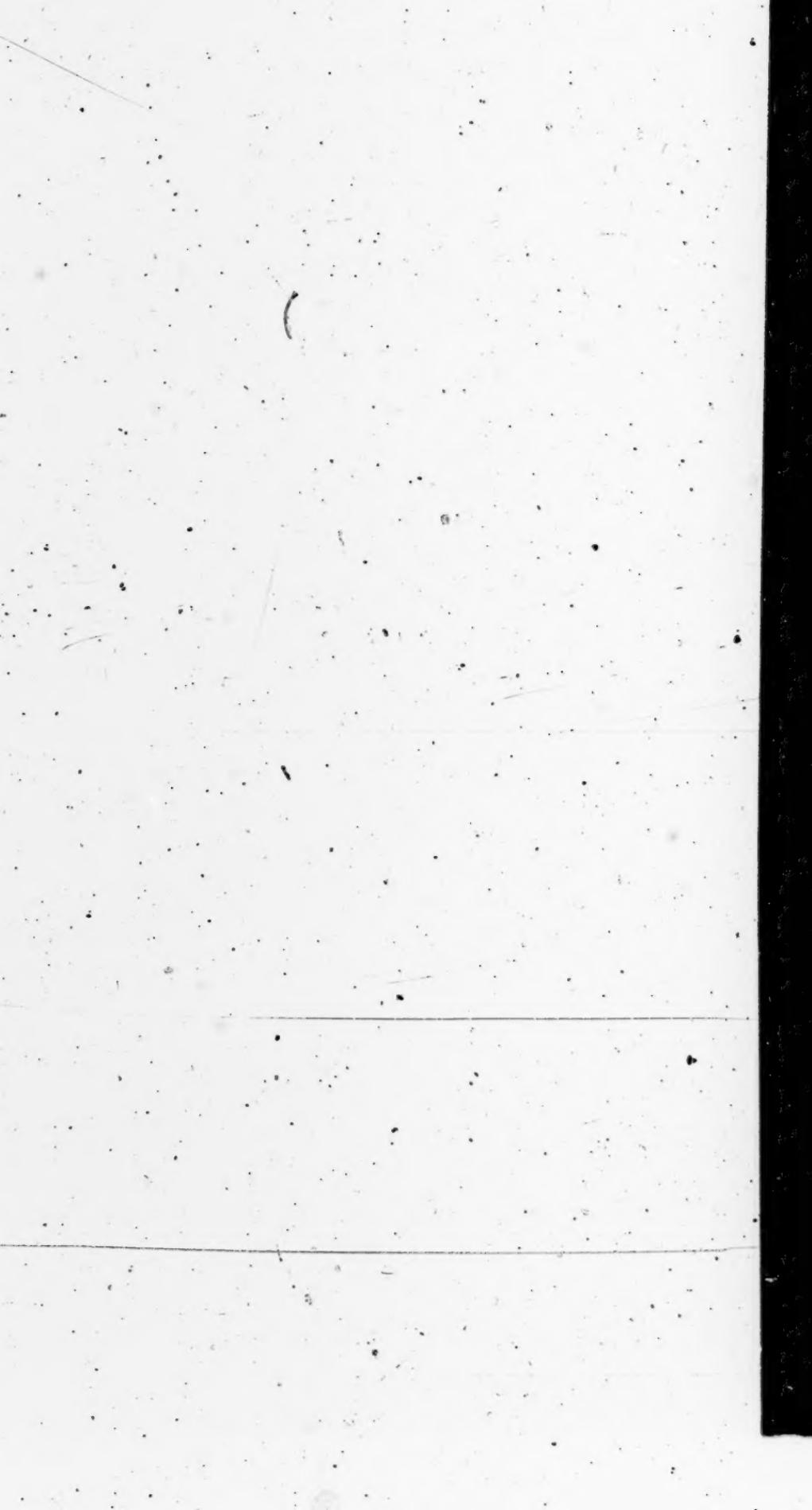
CHANCEY RAY BROWN & MARY G. BROWN,

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ON CERTIORARI TO THE CIRCUIT COURT OF
APPEALS, SEVENTH CIRCUIT.

RESPONDENTS' BRIEF.

SAMUEL E. COOK,
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Counsel for Respondents.

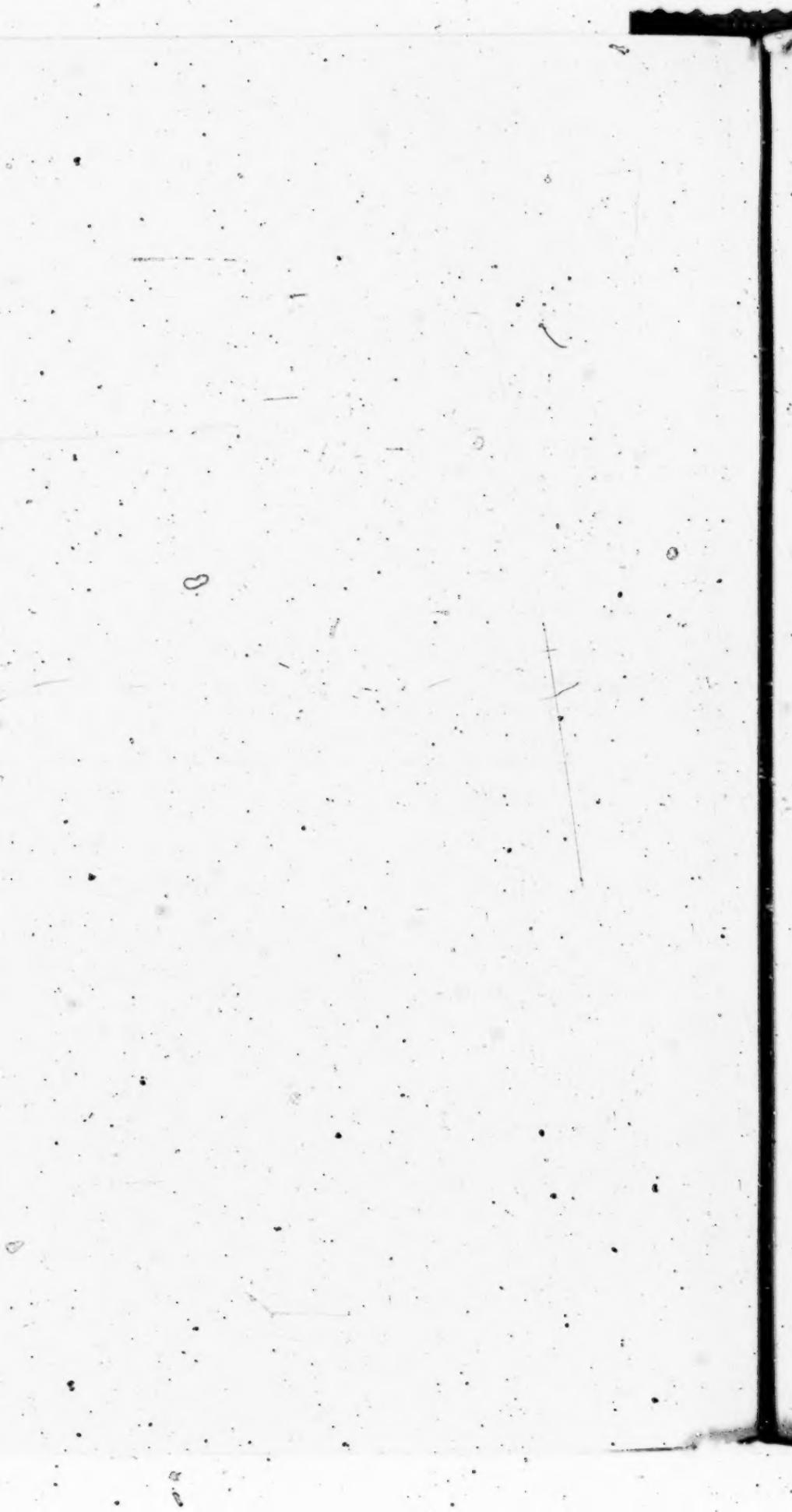


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IN THE
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STATE BANK OF HARDINSBURG,

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Respondents.

**ON CERTIORARI TO THE CIRCUIT COURT OF
APPEALS, SEVENTH CIRCUIT.**

RESPONDENTS' BRIEF.

PRELIMINARY.

(a). Rule 27 (e) of this Court provides the Appellant's Brief shall contain an assignment of the errors intended to be urged.

Revised Rules 27 (e).

(b). Subdivision 6 of Rule 27 further provides:

"6. When there is no assignment of errors, counsel will not be heard, except at the request of the court; and errors not specified according to this rule will be disregarded, save as the

Court, at its option, may notice a plain error not assigned or specified."

(c). The Petitioner's Brief does not contain an assignment of errors. Hence, the Court should disregard the alleged errors not assigned and decline to disturb the decision of the Court below.

(d). The Court gave the Respondents one week from October 15, 1942, to prepare and file their Brief. On October 16, 1942, they mailed to the Clerk of said Court their motion to dismiss the appeal on the above grounds. They must have this Brief printed at once to be in time. Under such conditions in presenting their brief on the merits, they do not intend to waive the grounds in said motion to dismiss, but claim the right to present their motion and this Brief too.

(e). This is a proceeding to enforce the remedial Acts of Congress and the recent decisions of this Court to save American Farm Homes. This Court has held the "distressed farmer" is entitled to the benefits of these Acts without the assistance of Attorneys or the expense of litigation and it was the duty of the Creditor herein to co-operate in granting relief to the Debtors. The record will show it has not done that but for over two years has tried to deprive the Debtors of the right to reside on their farm for three years with the right to redeem it. That it will further show said Creditor has waged intense litigation against them in the State Court (of Indiana), the Circuit Court of Appeals for the 7th Circuit (Chicago), to deprive them of the benefits of the Acts of Congress and try to cause them to lose their Home.

(f). To support the above statement we cite the

decision of this Court in Kalb vs. Feuerstein 308 U.S. 433 (Jan. 2, 1940).

The Court held: "Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal court litigation. To this end, a referee or Conciliation Commission was provided for every county in which fifteen prospective farmer-debtors requested an appointment; and express provision was made that these Commissioners should "upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section." In harmony with the general plan of giving the farmer an opportunity for rehabilitation, he was relieved—after filing a petition for composition and extension—of the necessity of litigation elsewhere and its consequent expense. This was accomplished by granting the bankruptcy court exclusive jurisdiction of the petitioning farmer and all his property with complete and self-executing statutory exclusion of all other courts."

(g). On this point the original Act of March 3, 1933, provided as follows:

"(q). A conciliation commissioner shall upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section

and farmers shall not be required to be represented by an attorney in any proceeding under this section."

So plain that he "who runs may read," but the Creditor preferred to law these—"distressed farmers" instead of giving heed to the commands of the "Supreme law of the land." For these reasons this appeal should be dismissed.

(d) STATEMENT OF THE CASE.

1. This part of the Petitioner's Brief did not set out that the Respondents claim, that under the amended Subsection (n) of Section 75 of the Act of Congress enacted August 28, 1935, where there is a Sheriff's sale of the land, that the time for the filing of the petition in bankruptcy, is extended to the date of the delivery of the deed. And failed to set out words to that effect.

2. That it also failed to set out that the Respondents claimed that said Subsection (n) provided as follows:

"Or where (the) deed had not been delivered, the period of redemption shall be extended—for the period necessary for the purpose of carrying out the provisions of this Section." And failed to set out words to that effect.

3. That it also failed to state that said Respondents claimed that Congress had the power to extend said time until said deed was delivered and hence, was a valid law. And failed to set out words to that effect.

4. That said Petitioner erred in claiming in said statement that the statutes of Indiana gave it title to said land and were controlling in this case. And in

failing to state that the Act of Congress in passing amended Subsection (n) of Section 75 in providing the petition in Bankruptcy could be filed prior to the delivery of the deed, made it the Supreme law of the land and hence, that the State law of Indiana could not be used to defeat it.

5. That it also failed to refer to the four recent decisions of this Court upon the question presented in this appeal.

QUESTIONS PRESENTED.

1. In stating its first question contending that the Respondents had no right or equity in the property, it should have stated that the Act of Congress prior to the date of its mortgage had given the Debtors a "right or equity" in this land to bring it into Bankruptcy at any time prior to the delivery of the Sheriff's deed, and thereby save their home.

2. The Petitioner in its second question, contending Subsection (n) was void, claiming it conflicted with the Fifth and Tenth Amendments to the Constitution, should have stated this Court had held said Amendments have nothing to do with this New Bankruptcy Act. That the power of Congress over the "subject of Bankruptcies" is in the class of the greatest powers of the Government. No State law can restrict or be used to defeat its legislation on that subject.

(f) SUMMARY ARGUMENT.

(a) The Federal Constitution has vested in Congress exclusive power over the "subject of bankruptcies." It is one of the greatest powers of Congress. It is in the class of the power to declare War.

to declare an Embargo and to Coin Money, and regulate the value thereof.

This Court has held that in adding Section 75 of the Act of March 3, 1933; to the General Bankruptcy Act of July 1, 1898, providing relief for insolvent farmers, that it intended the following:

"The development of bankruptcy legislation has been towards relieving the honest debtor from oppressive indebtedness and permitting him to start afresh. By the Act of March 3, 1933, the Congress deliberately undertook the rehabilitation of the debtor as well as his discharge from indebtedness. This legislation for rehabilitation has been upheld as within the subject of bankruptcies."

(b). All of the decisions of this Court hold that Congress is the Judge of the means it will employ in executing and carrying out its constitutional powers. The Constitution is not a self-executing Instrument. It will not enforce itself. The action of Congress in legislation and of this Court in construing it, are required to give life to that Great Instrument. Congress saw the old Subsection (n) was too narrow and did not include certain honest Debtors. Hence, it enacted an amended Subsection (n) on August 28, 1935. (This before the debt was contracted in this cause).

(c). Its purpose was to give relief to insolvent "distressed farmers." Hence, it gave the benefits of these remedial Acts to a class and included the farmer—"where (the) deed had not been delivered, at the time of filing the petition." It is conceded by the Petitioner in its Brief that this clause is a part of said Subsection (n). Hence, it is the duty of the

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Courts to enforce every part of an Act. This being a remedial Act for the relief of those who are insolvent and helpless financially, it must be given a liberal construction to carry out the purpose of Congress. This Court has stated that purpose as follows:

“This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt”—“The Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress.”

Wright Case, 311 U.S. 273.

(d). This Subsection (n) is the Supreme law of the land, “which all Courts”—“State and Federal must observe.” That the wisdom of such a law is for the “consideration of Congress alone.”

Kalb Case, 308 U.S. 433.

(e). This Court has held that Congress has the power to extend the State period of redemption of one year and thereby deprive the Creditor of the one year period and extend that period to three years. If it can take that one year from the Creditor and compel him to accept three years, it is as plain as the “Noonday Sun” that it could also add to the one year here and extend the time to file their petition any time prior to the delivery of the deed, in order to redeem their Home.

(f) This Court has held that Congress had the power to give to the Debtor the superior right to redeem his land at the appraised value of \$6000.00 and to discharge him from the payment of the balance of the debt of \$10000.00. If Congress can do that to give relief to “distressed farmers,” it follows

that it could disregard the one year to file under the State law, and extend the time to file up to the date of the delivery of the Sheriff's deed. Strange that the Petitioner would cite some forty cases, none of which have anything to do with question presented here, and failed to cite these cases. The fact is, it did not cite a single case which holds that Congress did not have the power to enact this clause.

Wright Case, 311 U.S. 273.

The Petitioner slept too long before it had the deed delivered. That was its own fault.

(g). In the first (Ind.) Wright Case it was urged by the Creditor to extend the period of redemption three years and other provisions of Section 75 (s) of the Bankruptcy Act would be a direct invasion of the powers reserved to the States and a violation of the Creditor's property rights theretofore determined by the Courts of the State of Indiana, "in accordance with the law of the State."

This Court brushed aside all that and held:

"If the argument is that Congress has no power to alter property rights, because the regulation of rights in property is a matter reserved to the States, it is futile. Bankruptcy proceedings constantly modify and affect the property rights established by State law. A familiar instance is the invalidation of transfers working a preference, though valid under State law when made."

Wright Case, 304 U.S. 502
82 L. Ed. 1490 (1501).

In other words (Preferences are valid under State law, but invalid under the Bankruptcy law if made within four months prior to the filing of the petition.

Hence, the Debtors rights under the State law are taken from him by the Bankruptcy Act).

If Congress can take that State right away, it follows it could take away the effect of the one year period provided by the State law and change it and extend the time to file after the end of the State period and prior to the delivery of the Sheriff's deed. That is the exact question in this case, and the Supreme Court has decided it against the contention of the Petitioner. Why did it not cite that case?

(h). The Record shows the Creditor has carried on intense litigation against the Debtors in the State and Federal Courts for nearly two and one-half years, to take this Home from them and deprive them of the benefits of these remedial Acts of Congress. It has "turned Heaven and Earth" and is now waging litigation in this Court to defeat the purpose of Congress. The District Court is a Court of Equity and Conscience. The Petitioner has attempted to make this remedial Act a "dead letter" and no law at all. Hence, it does not come into this Court in a proper manner. It has refused to obey the Supreme law. Those demanding equity must have done equity. To adopt the contention of the Petitioner, means the loss of this farm home. To decline to reverse the Court of Appeals, will save it. In this connection it should be stated that the Record shows the Petitioner is attempting to get over \$6000.00 worth of land for a debt of about \$3000.00.

(i). There is another vital thing, the Petitioner failed to point out in its multitude of citations. (Beware of too many citations. Citations do not make it so). It is this; It is the second clause of said amended Subsection (n) which provides—"or where

(the) deed had not been delivered, the period of redemption shall be extended—for the period necessary for the purpose of carrying out the provisions of this Section." The action of Congress in repealing the provision in the first clause, in the second, conclusively shows this extension was not limited to the date of the deed but made it elastic to be extended by the Court as long as necessary to give the Debtor the benefits of the Acts—Section 75 and amended Subsection (s). Congress intended to not only give the insolvent farmer time to file up to the delivery of the deed, but beyond that date if necessary—to make it doubly sure that the Debtor could redeem his home and retain the possession for three years in order to prepare for redemption. The Petitioner paid no attention to this second provision and never mentioned it. This leaves it no leg to stand on. It never noticed the cases which settle the question, but cited many in which the question here was not presented, or before the Court. Hence, it could not have decided it.

(j). The Petitioner's contention that the Respondents had no equity or right in the land at the time of filing of the petition, is not here nor there. True, the year of redemption had expired but the moment it did these two clauses of Subsection "N," instantly applied and gave them a right or equity in the land and the right to file any time prior to the delivery of said Sheriff's deed. These clauses are the Supreme law of the land and must be observed by the Courts—State and Federal. They must give effect to every part of a statute. What else will be done with these clauses? They are as much the law as any of the preceding clauses of the Subsection and must be applied to this case. What would be the use of Congress

passing this Act for the relief of "distressed farmers" if the Courts refuse to enforce it?

(k). The contention that the Fifth, Tenth and Fourteenth Amendments are violated by these clauses in Subsection (n) is not well taken. This Court held in Wright vs. Union Central, that they did not apply in such bankruptcy proceedings as in the case at Bar.

Wright vs. Union Central
304 U.S. 502.

ARGUMENT, PROPER.

Point I.

Subsection (n) of Section 75 of the Bankruptcy Act of Congress, as amended August 28, 1935, gave the Respondents the right to file their petition prior to the delivery of the Sheriff's deed herein. That this gave the District Court jurisdiction over the real estate herein in bankruptcy, and gave the Respondents the right to the benefits of said Acts to have the possession of and the right to redeem said land as provided in said Act and the Court of Appeals was correct and should be affirmed by this Court.

1. The Respondents rely on the following authorities to support the above point:

Amended Subsection (n) Section 75, enacted August 28, 1935,
41 U.S.C.A. Sec. 203 (n).

Point II.

The clauses extending the time to file prior to the delivery of the deed, was made part of the Frazier-Lemke Act, August 28, 1935, and was in force when the note and mortgage were executed on

February 19, 1938, and applied the instant the year under the State law expired (R. 24).

Point III.

This old Subsection (n) was not broad enough and Congress amended it on August 28, 1935.

It set up a class of conditions and provided persons coming within each, could file petitions as follows:

(a). One having an equity or right in such property. (Congress in extending the time up to the time of the delivery of the deed gave them an equity and right in the land and allowed them to file). This was a matter for Congress to settle and not the Courts.

(b). One who has a control for the purchase of land.

(c). One with a contract for deed or conditional sales contract (for land).

(d). One who had the right or equity of redemption and it had not expired.

(e). Or, where a deed of trust has been given as security.

(f). Or, where the sale has not been confirmed.

(g). And lastly "or where (the) deed had not been delivered at the time of filing the petition.

11 U.S.C.A. Sec. 203 (n).

(Black face our own).

2. It would be absurd to contend that Congress intended that each of the class down to (g) should be allowed to file in bankruptcy, but to deny that right to the last one. The Courts must give effect to the last clause as well as to the first. They must give effect to every part of a statute.

(No citation necessary).

3. This last clause is the Supreme law of the land, "which all Courts — State and Federal must observe."

Kalb vs. Feuerstein, 308 U.S. 433.

Point IV.

Congress had the power to extend the period for filing from the end of the state period to the time of the delivery of the deed.

Wright vs. Union Central
304 U.S. 502-518. 82 L. Ed. 1501.

1. The Court said in that case, in substance, that the Respondent contended that disregard of the State period of redemption of one year and extended that period three years "would be direct invasion of the powers reserved to the State" and a "violation of the property rights—theretofore determined by the Courts of the State of Indiana in accordance with the law of that State." This Court brushed that claim aside and said:

"If the arguments is that Congress has no power to alter property rights, because the regulation of rights, in property is a matter reserved to the States, it is futile. Bankruptcy proceedings constantly modify and affect the property rights established by state law. A familiar instance is the invalidation of transfers working a preference, though valid under state law when made."

"It (the Court) may enjoin like action by a mortgagee which would defeat the purpose of

Sec. 75, Subsection (s) to effect rehabilitation of the farmer mortgagor. Citing Wright vs. Vinton Mountain Trust Bank, 300 U.S. at 470, 81 L. ed. 747."

Wright Case, 304 U.S. 502
82 L² Ed. 1490 (1501).

Why did the Petitioner fail to cite that decision? It settles the question here.

2. This decision shows the plenary powers of Congress over "the subject of bankruptcies" can not be restricted by the States and that the laws of Indiana cannot be used to defeat this Supreme law of the land.

3. If there could be any doubt about that power it is settled by the Constitution itself — In enumerating its powers, Congress is first given the power to "establish uniform laws on the subject of bankruptcies."

Constitution Act 1, Sec. 8—Clause 4.

Then the Constitution adds:

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers"

4. To allow the Petitioner's contention—that the law of Indiana can be used to restrict the powers of Congress, would destroy the National character of our Government. This case is controlled by the Acts of Congress on the "subject of bankruptcies," delegated to that body. This leaves no power over that subject in the States. Congress having the power to select the means it will employ in executing its Constitutional Powers hence, had the power to alter property rights acquired under State Laws, and said

State Law of one year cannot be used to restrict the action of Congress.

5. Congress has lodged in the Courts the discretion to say how much time "was necessary for the purpose of carrying out the provisions of this Section." Meaning Section 75 and its amendment, Subsection (s). It meant the "distressed-farmer" should be given relief and the right to save his home, no difference if it did take some time after the delivery of the deed. Congress had the right to do this, even if it did "alter property rights" under the State law.

Wright Case, 304 U. S. 502-518
82 L. Ed. U. S. 1490 (1499).

Point V.

These two remedial clauses must be read in the light of the purpose of Congress as stated thus:

"The development of bankruptcy legislation has been towards relieving the honest debtor from oppressive indebtedness and permitting him to start afresh. By the Act of March 3, 1933, the Congress deliberately undertook the rehabilitation of the debtor as well as his discharge from indebtedness. This legislation for rehabilitation has been upheld as within the subject of bankruptcies."

Wright vs. Union Central 304 U.S.
502-518. 82 L. Ed 1590 (1499-1500).

Point VI.

Further explanation of the intent of Congress—that this Act is part of the mortgage debt. On that question this Court said:

"The mortgage contract was made subject to consti-

tutional power in the Congress to legislate on the subject of bankruptcies. Impliedly, this was written into the contract between petitioner and respondent. 'Not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order.'"

Wright Case, 304 U.S. 502, 82 L. Ed. U.S. 1490 (1500-1501).

1. It follows that the State provision as to the "one year" must yield to and give way to these clauses in the Acts of Congress. It can not be allowed to stand in the way of the Supreme law of Congress.

Point VII.

These two provisions for extension of time must be read and considered with the purpose of Congress stated in the last Wright Case, thus:

"This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt."

Wright vs. Union Central, 311 U.S. 273.

Citing:

John Hancock vs. Bartels, 308 U.S. 180.

Kalb vs. Feuerstein 308 U.S. 433, Borchard vs. California Bank, 310 U.S. 311.

Point VIII.

Also "the Act must be liberally construed to give the

debtor the full measure of the relief afforded by Congress."

Wright vs. Union Central, 311 U.S.
273, 85 L. Ed. 184.

Point IX.

"The States cannot, in the exercise of control over local laws and practice vest State Courts with power to violate the Supreme law of the land." . . .

(b). "The constitution grants Congress exclusive power to regulate bankruptcy and under this power, Congress can limit the jurisdiction which Courts, State or Federal can exercise over the person and property of a debtor who duly invokes the bankruptcy law." . . .

(c). "Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal court litigation."

Kalb vs. Feuerstein 308
U.S. 433.

Point X.

It follows as the "night the day" that the Respondents derive their right to file in bankruptcy after the end of the State period, from the Acts of Congress, the superior law and not from the State law. The Petitioner fell into the error of trying to make the case turn on the State law instead of the Federal law. The latter is controlling here. It applies to the question and the State law does not.

This is a Bankruptcy case and the Bankruptcy law is the only solution of the question presented.

Kalb Case 308 U.S. 433.

Point XI.

To properly decide a case the Court must apply the right theory of the same. It must determine what law applies and is controlling and follow that and turn away from that which does not apply. With the wrong theory and the law which does not apply, no case can be decided correctly.

(a). Twenty pages of the Petitioner's Brief is taken up in the citation of over forty cases and argument thereon.

We have only examined them as set out in the Brief. It follows that it discusses and exaggerates a number of questions not presented here at all. These cases no doubt decided correctly the questions before the Court in each. But the question presented here of the superiority of this Bankruptcy Act over State laws was not before the Court in either of them. Hence, the Courts could not have decided that vital question.

Hence, it would be a waste of time to try to reconcile these cases with the cases cited by the Respondents which apply to and directly decide the question presented in this appeal. The former will have to be excluded, and cast out.

(b). The Brief also places great stress on the dissenting opinion. It is also wrong because it does not apply the right theory. Following the wrong theory led to a wrong decision. And the dissenting Judge never referred to the last four recent de-

cisions of this Court which apply directly to and settle the question presented here. The Petitioner tried to "play Hamlet by leaving him out."

Such a decision as the Petitioner urges would be a shock to the conscience. It would defeat the purpose of Congress in enacting it and make the Act a sham and a "dead letter."

An examination of the majority opinion will show it based its decision on the right given in Subsection (n) of the Bankruptcy Act of August 28, 1935, to file any time prior to the delivery of the deed and that Congress had the power to so provide.

That Act means what it says. There the two clauses stand. They give this right. The Court must give effect to these clauses, the same as that which precedes them. It has no power to disregard or blot them out. It is conclusively presumed that Congress inserted these two clauses for some purposes—to allow the Debtor to save his home. These clauses are not mere idle words.

They were inserted for the sole purpose of saving farm Homes, and intended to apply to the case at Bar. No law will be violated by affirming the opinion below and a farm home will be saved. This Court has held that it was the "broad design of the Act to aid and protect farmer-debtors who were victims of the general economic depression."

Wright Case; 311 U.S. 273

Citing (Va.) Wright vs.

Vinton Mountain Trust Bank,
300 U.S. 466.

This Court has also held that in cases where the

debt exceeds the value of the security, the Creditor is entitled to no more than said value and then adds these significant words:

"There is no constitutional claim of the Creditor to more than that. And so long as that right is protected, the Creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the Debtor. Rather the Act must be liberally construed to give the Debtor the FULL MEASURE OF THE RELIEF AFFORDED BY CONGRESS—(John Hancock vs. Bartels **supra** Kalb vs. Feuerstein 308 U.S. 483), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and letter of the Act." (Capitals our own).

Wright vs. Union Central
311 U.S. 273 (Dec. 9, 1940)

This Court also in speaking of the contest of the Debtor with the Creditor:

"This race of diligence with a Creditor, for which customarily he would be poorly equipped."

Wright Case, 311 U.S. 273;

Thus the Court considered the financial power of the Creditor above the power of the insolvent Debtor.

The schedules filed in bankruptcy show that the debt to the Petitioner is only something over \$3000.00; while the 125 acres of land was valued at \$6000.00. (It is well known it is worth more now). It is subject to a first mortgage of \$725.00 and other small amounts. No wonder the Petitioner has made

such a fight here. In stating the case, why did it omit these facts?

(R. Judgment 28, 29, 30)

(R. 17 value land).

Time will not permit further discussion.

Enough has been said.

We hope we have aided the court in its great labors.

Wherefore they pray the Court to dismiss the appeal, or to affirm the judgment of the Circuit Court of Appeals.

Respectfully submitted,

SAMUEL E. COOK.

Counsel for Respondents,

Huntington, Indiana.



Op. 1, S. 6.

SUPREME COURT OF THE UNITED STATES.

No. 23.—OCTOBER TERM, 1942.

State Bank of Hardinsburg,
Petitioner,
vs.
Chancey Ray Brown and
Mary G. Brown.

On Writ of Certiorari to the
United States Circuit Court
of Appeals for the Seventh
Circuit.

[November 16, 1942.]

Mr. Justice ROBERTS delivered the opinion of the Court.

The court below has construed § 75(n) of the Bankruptcy Act¹ as bringing within the court's jurisdiction property mortgaged by the debtor as to which, after foreclosure, the debtor's equity of redemption had expired.² Because of conflict of decision³ we granted certiorari.

Subsequent to the adoption of § 75 the respondents borrowed \$2,500 from the petitioner and gave a promissory note secured by mortgage on their farm in Indiana. In a foreclosure proceeding in an Indiana state court petitioner obtained judgment November 20, 1939, ordering that the property be sold to satisfy the debt. May 25, 1940, the sheriff sold the farm to the petitioner. The respondents, who had not redeemed, filed their petition under § 75 on May 28, 1940, listing the farm in their schedules.

June 1, 1940, the sheriff executed and delivered his deed to the petitioner and, June 30, 1940, petitioner filed, in the District Court, a motion to strike the farm from the schedules on the ground that, at the date of the petition, the respondents had no right or equity in the property as the period of redemption provided by State law expired at the time of the sheriff's sale. The court granted the motion and struck the property from the schedules. The Circuit Court of Appeals, by a divided court, reversed the judgment.

Sectiory 75(n), so far as pertinent, provides:

¹ 11 U. S. C. § 203.

² 124 F. 2d 701.

³ Glenn v. Hollums, 80 F. 2d 555; Shreiner v. Farmers Trust Co., 91 F. 2d 666. Compare In re Randall, 20 F. Supp. 470; Buttars v. Utah ~~Mfg. Co.~~, 416 F. 2d 622.

"The filing of a petition . . . praying for relief under . . . [this section] shall immediately subject the farmer and all his property, wherever located, for all the purposes of this section, to the exclusive jurisdiction of the court, including all real or personal property, or any equity or right in any such property, including, among others . . . the right or the equity of redemption where the period of redemption has not or had not expired, or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition."

"In all cases where, at the time of filing the petition, the period of redemption has not or had not expired, or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended or the confirmation of sale withheld for the period necessary for the purpose of carrying out the provisions of this section."

The applicable statute of Indiana is Chapter 90 of the Acts of 1931.⁴ Although this statute appears not to have been construed by the State courts, it seems plain that under its provisions a sale in foreclosure can not be had until one year after the institution of the proceedings and that a sale, then made, cuts off all equity of redemption. The court below so concluded.

The question then is, should § 75(n) be so read that, although the debtor has no interest or equity in the land which has been sold, and is at most a trustee of the bare legal title, the land is to be drawn into the bankruptcy if the sheriff has not delivered his deed at the date of the initiation of the proceedings. The respondents insist that the section literally so provides and should be given effect accordingly. The petitioner replies that the fair meaning of the section as a whole is that only if the debtor still retains an equity of redemption does the land come under the bankruptcy jurisdiction. It adds that if the language be of doubtful import the legislative history fully supports the construction for which it contends. We hold with the petitioner.

Section 75(n), after declaring that all the debtor's property shall come under the exclusive jurisdiction of the bankruptcy court, adds that any equity or right in such property shall be within the court's jurisdiction. It then attempts to detail such rights; by a clause opening with the phrase "including, among

⁴ Burns Indiana Statutes 1933, §§ 3-1801 to 3-1809, inclusive.

others, . . . the right or the equity of redemption where the period of redemption has not or had not expired, . . ." This language would seem adequate to vest in the trustee any unexpired equity of redemption and furnish the basis for dealing with the property subject to such equity of redemption. Apparently out of an excess of caution the sentence then proceeds to catalog certain instances where, under state law, some act or thing has not occurred whose occurrence is essential to the termination of the equity of redemption. Thus the section proceeds "or where a deed of trust has been given as security, or where the sale has not or had not been confirmed, or where deed had not been delivered, at the time of filing the petition." It is, of course, common knowledge that, in various states, one or other of the events mentioned is necessary finally to cut off the equity of redemption.

The second paragraph of the section merely extends the period of redemption in cases where, at the time of filing the petition, the period of redemption has not or had not expired. Here again, however, in an excess of caution, the statute provides, after mentioning the expiration of the period of redemption, "or where the right under a deed of trust has not or had not become absolute, or where the sale has not or had not been confirmed, or where deed had not been delivered, the period of redemption shall be extended" . . . It seems clear that if no right of redemption exists there can be no period of redemption to extend.

A fair reading of the entire section indicates a clear intent to extend the bankruptcy jurisdiction over all property which still remains subject to redemption under state law at the time of filing the petition. The section does not evidence any intent on the part of Congress to bring back into the bankruptcy proceeding property which was once owned by the bankrupt and as to which his ownership and interest has been extinguished, unless such intent can be drawn from the provisions qualifying the general words of the section. We think that if Congress intended that a bankruptcy might reach back into the past and bring under the court's jurisdiction a former interest in property, which, under state law, had irrevocably passed to a third person, it would have so stated in terms too clear to leave any doubt.

If it be conceded that the construction of the section is doubtful, the legislative history is overwhelmingly in support of the view we have stated.

4: *State Bank of Hardinsburg vs. Brown et al.*

Subsection (n) as originally enacted⁵ provided that the filing of a petition under § 75 "shall subject the farmer and his property, wherever located, to the exclusive jurisdiction of the court." In administering this section the federal courts held diverse views as to their power to deal with the equity of redemption of a mortgagor after foreclosure.⁶ When Congress came to amend the Act to meet the decision of this court in *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555, it had in mind the fact that in many states a deed of trust is used as a method of giving real estate security for loans whereunder the trustee may make a sale; that in some states the equity of redemption exists until a deed has been delivered; that in others it expires with the actual sale under foreclosure; that in others it expires when the sale has been confirmed by the court and that in some, although all of these acts have been performed, the debtor has a right to relief during a specified period after confirmation of sale, delivery of deed and entry into possession by the purchaser.⁷ The Committee Reports in the House and Senate⁸ with respect to the proposed amendment evince a purpose to amend the existing law so as to render it clear that, whatever the right of redemption under state law, the bankrupt and his estate were to have the benefit of that right. Referring, *inter alia*, to the amendments to subsection (n), the House report states:

"These other amendments are largely clarification, and have become necessary because of the diverse rulings and holdings of the various United States district courts in the construction of section 75. Some of these courts have held that the farmer debtor could not take advantage of the act after foreclosure sale, and during the period of redemption. Some of these courts have refused to permit the farmer in that position to file his petition although under the law of his State he was in possession, entitled to rents and profits, and in full control of the property and could redeem it within the period allowed.

"Again, other courts have held that the farmer could not take advantage of the act during the period of moratorium established by a State, while others have held that the debtor could not take advantage of the act after sale, but prior to confirmation, although in all of these cases if the debtor had the money, and were in a position to pay, he could redeem, and save the property.

⁵ 47 Stat. 1473.

⁶ See 99 A. L. R. 1390-1393.

⁷ See Jones, Mortgages (8th Ed.) §§ 1695-1746; Wiltsie, Mortgage Foreclosure (5th Ed.) § 1199.

⁸ H. R. Report No. 1808, 74th Cong., 1st Sess.; S. R. 985, 74th Cong., 1st Sess.

"It is clear that these courts are reasoning too technically, and have failed to carry out the intention of Congress, which was to protect the farmer's home and property, and at the same time to protect the creditor. On the other hand, other courts have held just the opposite, and have given full protection, and carried out the intent of Congress. Under this condition, we think it is admitted by all that there should be uniformity."

The language of the Senate Report goes into somewhat more detail but is of the same purport. When the amendments were before the Senate, Senator Borah, a member of the Committee, explained them to the Senate in the following language:⁸

"In the first place, however, it ought to be said that we undertook to make some amendments in section 75 before we got to subsection (s). These amendments are for the purpose of clarifying section 75. Some of the courts have held that the farmer debtor could not take advantage of the act after foreclosure sale and during the period of redemption. The bill undertakes to clarify it so as to permit the farmer to take advantage of section 75 after foreclosure and during the period of redemption.

"Some of the courts also refused to permit the farmer who was in that position to file his petition, although under the law of the State he was in possession and full control of the property and could redeem it during the period of moratorium established by the States. One of the amendments to section 75 takes care of that objection which was raised by the court.

"Amended subsection (s) construes, interprets, and clarifies both subsections (n) and (o) of section 75. By reading subsections (n) and (o) as now enacted, it becomes clear that it was the intention of Congress, when it passed section 75, that the debtor and all of his property should come under the jurisdiction of the court of bankruptcy, and that the benefits of the act should extend to the farmer prior to confirmation of sale and during the period of redemption. In other words, the amendments provide that the farmer may avail himself of the act after foreclosure and during the period of redemption, and may also avail himself of the act during the period of the moratorium provided for him within the State."

The law of Indiana gives the debtor a year from the institution of foreclosure suit within which to redeem and terminates his right and interest in the property at the sale. The delivery of a deed by the sheriff, therefore, becomes a ministerial act which he can be compelled to perform.¹⁰ Such delivery constitutes mere record

⁸ Cong. Rec. Vol. 79, Pt. 16, p. 15632.

¹⁰ Jessup v. Carey, 61 Ind. 584, 592; Hubble v. Berry, 180 Ind. 513, 519; State ex rel. Miller v. Bender, 102 Ind. App. 183.

evidence of the purchaser's title which is perfect from the date of sale. As the sale cut off all rights of the debtor § 75(n) does not bring the property within the jurisdiction of the bankruptcy court.

The petitioner urges that the construction given the section by the court below would render it unconstitutional. The view we take of the meaning of the statute makes it unnecessary to consider this contention.

The judgment of the Circuit Court of Appeals is reversed and that of the District Court is affirmed.

Mr. Justice MURPHY, dissenting.

Mr. Justice BLACK, Mr. Justice DOUGLAS and I cannot agree with the opinion of the Court. Section 75(n) subjects to the exclusive jurisdiction of the bankruptcy court all property in which the petitioning farmer-debtor has any equity or right "including, among others . . . the right or the equity of redemption where the period of redemption has not or had not expired, . . . or where deed had not been delivered, at the time of filing the petition". Conceding that respondents' equity of redemption was cut off under Indiana law prior to the filing of their petition, the deed had not been delivered at the time of filing. Respondents thus come within the exact terms of § 75(n), and the property should not have been struck from their schedules.

We have said that doubts in §75 are to be settled in the debtor's favor, and that it "must be liberally construed to give the debtor the full measure of the relief afforded by Congress, lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act." *Wright v. Union Central Ins. Co.*, 311 U. S. 273, 279. But we are now told that the spirit and the letter of § 75(n), especially the phrase, "or where deed had not been delivered", may be disregarded upon a "fair reading of the entire section" and a consideration of its legislative history, both of which, it is claimed, disclose that Congress did not intend the benefits of § 75 to extend beyond the expiration of the equity of redemption by force of state law, the above-quoted phrase being added, "apparently out of an excess of caution", to provide for those states in which the equity of redemp-

tion survives until the delivery of a deed. If Congress so intended, its words were poorly chosen. Congress could easily have declared that bankruptcy jurisdiction does not survive the extinguishment of the equity of redemption under state law, whether that extinguishment is accomplished by sale, confirmation, or the delivery of a deed. Instead Congress used the disjunctive "or". That Congress did not so intend is clear from the legislative history of the Act. The true Congressional purpose was "to protect the farmer's home and property, and at the same time to protect the creditor".¹ This purpose is best achieved by giving effect to the precise words of § 75(n). The farmer is given a chance to rehabilitate himself so long as he has any vestige of a right in the property, call it "bare legal title" or what you will. The creditor is protected because the value of the property remains, under adequate safeguards provided by the Act, as security for the debt. "There is no constitutional claim of the creditor to more than that." *Wright v. Union Central Ins. Co.*, 311 U. S. 273, 278.

¹ H. Rep. No. 1808, 74th Cong., 1st Sess., p. 2. See also S. Rep. No. 985, 74th Cong., 1st Sess., p. 2.